MT LEGISLATIVE HISTORY

Chapter 821 1991

Bill H _____ S 154 Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 13	✓C	Hearing Date(s) Feb 01	✓C
Mar 20	✓C	Feb 13	✓C
Mar 21	✓C	Feb 16	✓C
_____	C	_____	C
Date Out Mar 21	✓C	Feb 16	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Note: Conference Committees were appointed in both the House and Senate. Those minutes are unavailable.

1/28	FISCAL NOTE RECEIVED		
1/30	FISCAL NOTE PRINTED		
2/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/09	REREFERRED TO TAXATION		
2/18	FISCAL NOTE REQUESTED		
2/21	HEARING		
2/21	FISCAL NOTE PRINTED		
2/21	FISCAL NOTE RECEIVED		
3/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
3/23	2ND READING PASSED	28	18
3/25	3RD READING PASSED	31	17
	TRANSMITTED TO HOUSE		
3/25	FIRST READING		
3/25	REFERRED TO TAXATION		
4/04	HEARING		
4/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/15	2ND READING CONCUR MOTION FAILED	41	57
4/15	SEGREGATED FROM COMMITTEE OF WHOLE REPORT FOR PURPOSES OF AMENDMENT		
4/16	2ND READING CONCUR AS AMENDED MOTION FAILED	48	52

SB 152 INTRODUCED BY TOWE, ET AL.
CLARIFY PROPERTY TAX EXEMPTION OF MUSEUMS, ART GALLERIES, AND OBSERVATORIES

1/21	INTRODUCED		
1/21	REFERRED TO TAXATION		
1/21	FIRST READING		
1/21	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE PRINTED		
1/25	FISCAL NOTE RECEIVED		
1/29	HEARING		
2/06	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/08	2ND READING PASSED	46	0
2/09	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/11	REFERRED TO TAXATION		
3/05	HEARING		
3/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/09	2ND READING CONCURRED	82	11
3/11	3RD READING CONCURRED	79	19
	RETURNED TO SENATE WITH AMENDMENTS		
3/16	2ND READING AMENDMENTS CONCURRED	49	0
3/18	3RD READING AMENDMENTS CONCURRED	49	0
3/23	SIGNED BY PRESIDENT		
3/23	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 271	EFFECTIVE DATE: 10/01/91	

SB 153 INTRODUCED BY TOWE, ET AL.
REVISE COLLATERAL SOURCE RULE

1/21	INTRODUCED		
1/21	REFERRED TO JUDICIARY		
1/21	FIRST READING		
1/29	HEARING		
2/06	COMMITTEE REPORT—BILL NOT PASSED		
2/06	ADVERSE COMMITTEE REPORT ADOPTED	46	1

SB 154 INTRODUCED BY NATHE, ET AL.
CLARIFY LEGISLATIVE IMMUNITY

1/21	INTRODUCED		
1/22	REFERRED TO JUDICIARY		
1/22	FIRST READING		
2/01	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/18	2ND READING PASSED	48	0
2/19	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
3/04	FIRST READING		
3/04	REFERRED TO JUDICIARY		
3/13	HEARING		
3/22	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/05	2ND READING CONCURRED	88	8
4/06	3RD READING CONCURRED	91	5
	RETURNED TO SENATE WITH AMENDMENTS		
4/17	2ND READING AMENDMENTS NOT CONCURRED	49	0
4/19	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	49	0
4/29	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	48	0
	HOUSE		
4/20	CONFERENCE COMMITTEE APPOINTED		
4/22	CONFERENCE COMMITTEE REPORT NO. 1		
4/23	2ND READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	91	2
4/23	3RD READING CONFERENCE COMMITTEE REPORT NO. 1 ADOPTED	95	3
5/03	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 821	EFFECTIVE DATE: 5/24/91	

SB 155 INTRODUCED BY JERGESON, ET AL.
REPEAL ANNUAL AUDIT OF AGRICULTURAL LOAN AUTHORITY
BY REQUEST OF LEGISLATIVE AUDIT COMMITTEE

1/21	INTRODUCED		
1/22	FISCAL NOTE REQUESTED		
1/22	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
1/22	FIRST READING		
1/25	HEARING		
1/25	FISCAL NOTE PRINTED		
1/25	COMMITTEE REPORT—BILL PASSED		
1/25	PLACED ON CONSENT CALENDAR		
1/25	FISCAL NOTE RECEIVED		
1/29	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
1/30	FIRST READING		
1/30	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIG.		
2/04	HEARING		
2/05	COMMITTEE REPORT—BILL CONCURRED		
2/05	PLACED ON CONSENT CALENDAR		
2/07	3RD READING CONCURRED	99	0
	RETURNED TO SENATE		
2/14	SIGNED BY PRESIDENT		
2/14	SIGNED BY SPEAKER		
2/15	TRANSMITTED TO GOVERNOR		

SENATE BILL NO. 154

INTRODUCED BY NATHE, LYNCH, COBB,
WHALEN, L. NELSON

IN THE SENATE

JANUARY 22, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 16, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1991	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 19, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 50; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 22, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
APRIL 5, 1991	SECOND READING, CONCURRED IN.
APRIL 6, 1991	THIRD READING, CONCURRED IN. AYES, 91; NOES, 5.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1991	RECEIVED FROM HOUSE.
APRIL 9, 1991	ON MOTION, CONSIDERATION PASSED UNTIL THE 76TH LEGISLATIVE DAY.

APRIL 17, 1991	SECOND READING, AMENDMENTS NOT CONCURRED IN.
APRIL 17, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED.
APRIL 19, 1991	CONFERENCE COMMITTEE APPOINTED.
	IN THE HOUSE
APRIL 20, 1991	ON MOTION, CONFERENCE COMMITTEE REQUESTED AND APPOINTED.
	IN THE SENATE
APRIL 22, 1991	CONFERENCE COMMITTEE REPORTED.
APRIL 23, 1991	SECOND READING, CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE HOUSE
APRIL 23, 1991	CONFERENCE COMMITTEE REPORT ADOPTED.
	IN THE SENATE
APRIL 24, 1991	THIRD READING, PASS CONSIDERATION.
APRIL 25, 1991	THIRD READING, PASS CONSIDERATION.
APRIL 29, 1991	THIRD READING, CONFERENCE COMMITTEE REPORT ADOPTED.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 154

INTRODUCED BY Nathe, Lynch, Cobb, Whalen, Nelson

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS TAKEN BY THOSE BODIES; CLARIFYING THAT GOVERNMENTAL ENTITIES ARE NOT IMMUNE UNDER THE LEGISLATIVE IMMUNITY STATUTE FOR NONLEGISLATIVE ACTIONS; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" ~~includes~~ means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards~~.~~;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy; and

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana;

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for ~~an~~ a legislative act or omission ~~of~~ by its legislative body, or ~~a~~ any member~~,~~ ~~officer,~~ ~~or agent thereof~~ or staff of the legislative body, engaged in legislative acts.

(3) A Any member~~,~~ ~~officer,~~ or ~~agent~~ staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with ~~the introduction or consideration of legislation or action by~~ legislative acts of the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation."

NEW SECTION. **Section 2.** Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 3.** Effective date -- retroactive

INTRODUCED BILL SB 154

applicability. [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action arising on or after July 1, 1977, that have not been reduced to judgment by [the effective date of this act].

-End-

CHAIRMAN--RICHARD PINSONEAULT
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: M,T,W,T,F TIME: 10:00 A.M.
SECRETARY-JOANN BIRD

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0125	1/18	1/23		PASS AS AMENDED		1/28
BROWN, BOB			REQUIRE LOAN AND CREDIT AGREEMENTS TO BE IN WRITING TO BE ENFORCEABLE			
SB0138	1/18	1/31		TABLED ON 02/23		
STIMATZ, LAWRENCE			WORKFORCE DRUG TESTING ACT			
SB0140	1/18	1/25		PASS AS AMENDED		1/28
WATERMAN, MIGNON			INCLUDE ANABOLIC STEROIDS AS A SCHEDULE III DRUG			
SB0145	1/18	1/24		ADVERSE RPT ADOPT		2/23
BROWN, BOB			ALLOW NEW TYPE OF GAMBLING ONLY BY VOTE OF THE PEOPLE			
SB0153	1/21	1/29		ADVERSE RPT ADOPT		2/06
TOWE, TOM			REVISE COLLATERAL SOURCE RULE			
SB0154	1/22	2/01	2/13	PASS AS AMENDED		2/16
NATHE, DENNIS			CLARIFY LEGISLATIVE IMMUNITY			
SB0170	1/22	1/29		PASS AS AMENDED		1/31
VAUGHN, ELEANOR			SEXUAL OFFENDER PAY FOR EVALUATION; ESTABLISH QUALIFICATIONS OF EVALUATORS			
SB0190	1/23	1/31	2/6	PASS AS AMENDED		2/09
WEEDING, CECIL			REVISE METHOD OF ENFORCEMENT AND PENALTIES FOR UNFAIR TRADE PRACTICES			
SB0196	1/25	2/01		PASS AS AMENDED		2/05
BECK, TOM			PROVIDE FOR CONFINEMENT OF INMATES WHEN INSTITUTION'S CAPACITY EXCEEDED			
SB0198	1/25	2/06		DO PASS		2/07
BROWN, BOB			CORRECT HOUSING DISCRIMINATION CITATION ERROR			
SB0199	1/25	2/06	2/15- statute of limitations	PASS AS AMENDED		2/09

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 1, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Chairman Pinsoneault announced that Vice Chairman Yellowtail would be chair for the day.

HEARING ON SENATE BILL 154

Presentation and Opening Statement by Sponsor:

Senator Dennis Nathe, District 10, said SB 154 attempts to clarify who has legislative immunity and who does not. He advised the Committee the first major change is on page 1, line 19 which deletes "includes" and inserts "means", and defines a legislative body. He said line 24 defines what a legislative act means, and page 2, subsection (b) covers impeachment powers of the Montana Legislature, further defining what is not included. Senator Nathe explained that lines 7-10 further define "legislative body" and section 3 contains a retroactivity clause.

Senator Nathe stated that Mary Fitzpatrick's case in Anaconda was publicized last week after the most recent Supreme Court ruling

on legislative immunity. He said Chief Justice Turnage summed the decision up on page 33 of the Court's opinion, "The Legislature, and not the courts, has the proper forum to decide who has legislative immunity".

Senator Nathe told the Committee section 2 has a substantiability clause addressing the woman with tuberculosis who moved into the state, and because nothing was done, infected 30 other people. He said those residents received compensation and were made whole, and that it strikes him as grossly unfair that Mary Fitzpatrick was denied any compensation even though she was most severely damaged.

Proponents' Testimony:

Noni Aki-Linder, Missoula, told the Committee that until today she was only a statistic. She explained that in 1979 a tuberculosis carrier came into Missoula, and that she was one of 30 exposed people who were put on medication. Ms. Linder said she became very ill from the medication and had to be hospitalized. She stated that doctors again administered the medication and she became so ill that she suffered permanent central nervous system damage.

Ms. Linder advised the Committee she is a Hawaiian by birth, and had learned from birth to help herself. She said she complied with all of the doctors, the state, and the county, doing all that was asked of her. Ms. Linder stated she pushed herself to the point of passing out with pain, and now wears back and leg braces. She explained that administration of an anesthetic during a November 1990 visit to the dentist caused her to go into anaphylactic shock, and said she can no longer take any medication of any kind. Ms. Linder added that she carries syringes with her to counteract shock.

Ms. Linder told the Committee that until July 1990 she worked with the county and the state to provide all of her medical records going back to age 24. She stated she did not want to be the way she is, and that it was a great effort to even come to Helena to testify. Ms. Linder said she could not believe the immunity injunction when all other claims were paid.

Ms. Linder commented that she has been in Montana since 1961, and has learned that when Montanans are wrong they admit it. She stated she wants "her day in court" and believes only the Legislature can do that. Ms. Linder said that as a former Health and Social Services Administrator for the State of Alaska, she learned about the attitudes of people. She said she was asking for fairness for all concerned, and that in 1985 she wrote the entire Legislature regarding the responsibility of people who injure others. Ms. Linder stated she is very angry because she has been pursued by bill collectors and had to stop therapy because the therapist was concerned about getting paid. She told the committee she is one of 50,000 remaining one-half to pure Hawaiians, and that

she had to sell her small piece of land in Hawaii to pay medical bills.

Monte Beck, Bozeman attorney, told the Committee he has represented people injured by negligent acts. He stated that 2-9-101, MCA, has prevented injured parties from redress, and said it is unfair and disturbing to all citizens across Montana. Mr. Beck provided an article from the Bozeman Chronicle in which the last paragraph says the Legislature should look at clarifying legislative immunity and at making workers responsible for their actions (Exhibit #1). He said the high court has gone too far.

Mr. Beck said SB 154 clarifies what the Legislature decided years ago. He stated that last session legislators were given copies of who was intended to be protected, and said no one disputes that the Legislature should be immune. He added that this was changed in the 1988 Supreme Court decision.

Mr. Beck stated SB 154 declares the difference between a legislative and an administrative act. He provide an example of a school disaster, and asked if parents should have to pay medical costs for their children. Mr. Beck asked if government were not supposed to be the type of citizen a private citizen should look to. He stated he hoped the Committee would consider retroactivity in the past part of the bill, and said people have been harmed in the past three years who could still be viable.

Mr. Beck asked the Committee to recognize section 18 of the Montana Constitution, and read from prepared testimony (Exhibit #1a).

Phil Campbell, Montana Education Association, said he believes the bill should pass, and return original intent to the law. He advised the Committee there is a problem with school boards who say, "You can't sue us, we're immune.", and now the Supreme Court decision says one can sue if the party being sued has insurance. He urged the Committee to favorably consider the bill.

Carl Hatch, Helena attorney, stated his support of the bill, and said he believes the issue has divided the Supreme Court. He advised the Committee the Helena landfill has leached harmful substances into the land of adjacent property owners who have no remedy for damages.

Theresa Bird, Montana Federation of Teachers, said she echoed statements made by Phil Campbell in support of SB 154.

Ben Everett, Anaconda attorney, representing Mary Fitzpatrick against the school district, said he believes the law must be clarified.

Jim Jensen, Montana Environmental Information Center, referring to the testimony of Carl Hatch, said a lot of bills have been introduced dealing with landfill issues. He stated this is a

very serious problem and people need to know who is responsible. He suggested that retroactivity as addressed on page 3, line 4, be amended to clarify what "reduced to judgement" means.

Mike Sherwood, Montana Trial Lawyers Association, stated that the retroactivity portion of the bill could be passed and not "blow the doors wide open" (Exhibit #2).

Mary Fitzpatrick, Anaconda, read from prepared testimony in support of SB 154 (Exhibit # 3).

Opponents' Testimony:

Alec Hansen, Montana League of Cities and Towns, and General Manager, Montana Municipal Insurance Authority, stated that language clarifying legislative immunity is desperately needed. He stated that the Authority operates on the basis of paying fairly on claims, but he believes there are areas where it is impossible to control liability exposure.

Mr. Hansen proposed amending the bill by excluding monetary damages where remedy is available (zoning or building permits, for example); immunity for defects in public buildings when they are known, but dollars are not available to maintain those public facilities; and immunity from acts arising out of 911 emergency services, except for gross negligence. Mr. Hansen said he was not proposing blanket immunity, and that he believes there is an answers. He told the Committee he hopes they can find that answer.

Bruce Moerer, Montana School Boards Association, told the Committee he did not advocate negligence by employees. He said the schools do not have legislative authority and their policies are unique to each district. He stated he would appreciate clarification of school board policy.

Senator Dick Pinsoneault, provided a copy of a letter from Home Insurance Company, and said that he was Chairman of School District 28 when a matter arose, and that later on each member of the Board was named individually in the suit. Senator Pinsoneault read the third paragraph from the Home Insurance Company letter which stated that any amount in excess of $1 million would be the responsibility of each individual. (Exhibit #4).

Senator Pinsoneault stated it is unethical for an attorney not to pursue for return to wholeness. He stated that as a proponent, he believes the two women who testified should be made whole. Senator Pinsoneault commented that the fear is in how to make compensation. He said that in the early days the king was immune, and that if retroactivity were applied on a broad base, it might be a hollow victory if limits apply.

Jim Wysocki, City of Bozeman, said the Committee needs to find a way to balance this situation, and suggested that they look at Alec Hansen's amendment in order to establish fairness.

David Hull, City Attorney, Helena, said this is a policy decision to be weighed, and that he is concerned whether there are enough dollars to go around. He stated Helena does not have the money to fix its sewers, and asked if the City would be sued. He commented that if the bill is fully retroactive it will open a Pandora's box. Mr. Hull agreed that, "These people may need redress through the Legislature" (Exhibit #5).

Jesse Long, School Administrators of Montana, said he did not condone the negligence of school personnel, but was concerned as to how school board policy fits into the act.

Questions From Committee Members:

Senator Svrcek asked Senator Nathe if he were serious about the retroactivity clause, and, if so, why. Senator Nathe replied he was, and said people who have been severely damaged have no compensation. He commented that if the language could be tightened up, it would be fine with him, but Noni Linder and Mary Fitzpatrick need to be helped. He stated it was not his intent to open "the whole liability insurance thing".

Senator Crippen asked Alec Hansen to repeat the amendments he proposed during his testimony. Mr. Hansen replied that immunity would apply to unknown defects in public buildings and to those which could not be repaired because of competing financial demands. He stated that the Municipal Insurance Authority "owns two houses because every time it rains they flood, and the City of Helena can't pay to fix them".

Senator Crippen commented that under the proposed amendments, there won't be enough money to pay for damages such as those to Mary Fitzpatrick. He stated he believed there would clearly be negligence in that case. Alec Hansen replied he was not sure this amendment would apply in the Fitzpatrick case.

Senator Crippen further commented that the way the amendment reads is "pretty bad". Alec Hansen replied he is interested in legitimacy, and was talking about not being able to fix all the streets in a given city in one year.

Senator Mazurek asked how the bill would focus on retroactivity, and what the rationale is for going back to 1977. Mike Sherwood replied his written testimony "lays out that it is not the intent to open the doors of 1977". He stated that in looking at the Attorney General's opinion (attached to testimony), he believes that it is "in effect talking 1988".

Senator Mazurek asked if a clause may need to be drafted to address claims spoken of during this hearing, creating a "window of opportunity". Mike Sherwood replied he would have no objection to language concerning 1988, but it would be redundant to the Attorney General's opinion. He said Noni Linder's attorney came believe the Crowell v School District #7 of Gallatin County decision may save

her claim. He added that Mary Fitzpatrick came believing there was no way to save her claim.

Senator Pinsoneault asked Ben Everett if the Legislation has a cap, and if the Committee would be "falling into a trap where they may lose the war in the end". Mr. Everett replied that at least being able to partially recover would be better than nothing.

Senator Towe asked if "legislative" should have been put before "act" on page 2, line 8 of the bill. Alec Hansen replied it is a proposed exclusion on monetary damages when their is remedy of action through monetary appeal. He said that if the District Court turns the decision of a zoning board around, people would not be entitled to monetary damages.

Senator Towe asked why what's good enough for the state is not good enough for cities and towns (2-9-305, MCA). Alec Hansen replied he was not in a good position to answer such a specific question.

Senator Svrcek asked Ben Everett if even with this legislative proposal, it would still not be a legislative act, if the front door of the gymnasium were not used. Mr. Everett replied he did not know if the amendment proposed would do this.

Senator Svrcek asked where the fault does lie if this scenario were adopted.

Senator Yellowtail noted that a fax was received from the Ravalli County Commissioners in opposition to SB 154 (Exhibit #6).

Closing by Sponsor:

Senator Nathe stated the bill leaves the responsibility to the Legislature. He said that in pages 31-33 of the most recent Supreme Court decision, the Chief Justice said the Legislature is the forum to set forth the rule of law. Senator Nathe added that this bill is an issue of fairness.

HEARING ON SENATE BILL 196

Presentation and Opening Statement by Sponsor:

Senator Tom Beck, District 24, told the Committee that in Summer 1989, the prison director asked the Department of Institutions (DOI) Director, Curt Chisholm, not to send any more prisoners to Deer Lodge. Senator Beck stated Mr. Chisholm had no legal authority to put this cap on, and that the bill would provide authority to temporarily withhold admission to the prison.

Senator Beck explained that as soon as an individual is sentenced, he or she becomes a ward of DOI, and thus DOI will

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 17 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

SB 15
2-1-91

OUR OPINION

The king *can* do wrong

High court has gone too far in granting government immunity

Montana government — from school boards up to the governor's office — is perfect and can do no wrong to the people of the state.

At least that's how the courts increasingly are treating various government boards and agencies in dismissing lawsuits filed by aggrieved citizens.

Government immunity from lawsuits stems from a 1985 Montana Supreme Court ruling that absolved the Gallatin County Commission in a civil dispute over subdivision regulations.

From that fairly minor case has sprung a multitude of decisions granting government immunity from lawsuits filed by fired employees, injured public school students, citizens who fell on city sidewalks, and businesses in contract disputes.

Judges are applying the high court ruling broadly — so broadly that citizens with legitimate beefs against government are being denied their day in court.

Supreme Court judges, said frequently dissenting Justice John C. Sheehy, "have not only excused the king; they have excused the king's men, his feudal lords and all their vassals."

State legislators, wrestling with the rising cost and difficulty of buying liability insurance for government, passed a law that government entities should be immune from suits unless there is damage resulting from use of a vehicle.

The law is being interpreted to let government officers and workers, from legislators to janitors, off the hook when their actions damage someone.

Limited immunity from suits is necessary for government to be able to function. Elected government officials must have some protection from lawsuits or they will never be able to make tough decisions and set policy. They can't be looking over their backs for a trial lawyer coming at them every time they vote.

With liability insurance premiums soaring — some towns have had trouble even finding an insurance company to cover them — some steps were necessary to help state and local government.

But the courts are going beyond the Legislature's intent on government immunity. So-called "frivolous" lawsuits are being tossed out along with serious complaints, such as those alleging personal injury and wrongful discharge.

Government carries liability insurance to cover just such situations. But immunity decisions let insurance companies off the hook. Ironically, taxpayers who foot the bill for insurance premiums cannot collect when they are damaged by government.

The problem seems to result from the lack of distinction between "legislative acts" that set policy and "administrative acts" that carry out the policies.

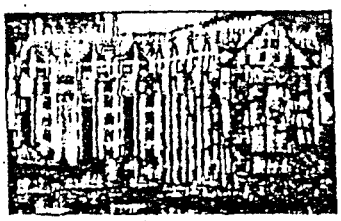
The next Legislature should look at clarifying government immunity laws to protect officials who vote on policies, but make government administrators and employees who hire workers, coach athletics or plow sidewalks responsible for their actions.

As everybody knows — except perhaps the courts — government is not perfect.

EN 71
SB 154
2-1-91

SUNDAY SUNDAY PAGE

y building
on track
charges
vorkers
page 31



'High stress' or no, new mothers overjoyed with their new 'jobs'
page 17

Bozeman Daily
CHRONICLE
SUNDAY, MAY 5, 1991 BOZEMAN, MONTANA

You can't sue the government

Montana Supreme Court finding agencies immune from liability

By NATALIE K. PHILLIPS
Chronicle Staff Writer

Right now, government employees can be fired, someone traipsing across county or state property can be injured and students can be hurt on faulty public school playground equipment and they probably are not going to get their day in court.

"It is open season on people," Bozeman attorney Monte Beck said sarcastically of the latest batch of decisions by the Montana Supreme Court regarding government agencies' liability.

"If you are a government entity, go ahead and ignore safety," said Beck, who filed an appeal Friday in an injury case involving a school district. "There is no reason to pay insurance premiums anymore...We are back to the era of 'the king can do no wrong.'"

"It's a hot issue spawning a whole new debate about the immunity issue," said Gallatin County Attorney Mike Salvagni.

An untold and rapidly increasing number of lawsuits against school districts and city and county governments across the state are being tossed out as District Court judges follow the latest thinking espoused by the state's high court.

It started in 1985 and has snowballed in the past six months to where the Supreme Court has been upholding near blanket immunity for government agencies.

> "(The justices) have not only excused the king; they have excused the king's men, his feudal lords and all their vassals."
>
> —*Justice Sheehy in dissent*

The law states that a government entity, its members, officers or any of its agents should be immune from lawsuits unless there is damage resulting from the use of a vehicle.

The Supreme Court is interpreting that to mean that everybody from legislators, city council members all the way down to janitors cannot be sued.

That was not the intent of the Legislature, counters attorney Beck. The intent was to protect elected officials who have to draft policies for the good of the community as a whole.

(More on Immunity, page 8)

SB 134
2-1-91

Injured-student case appealed to high court

By NATALIE K. PHILLIPS
Chronicle Staff Writer

Pointing out that Bozeman School District carried liability insurance in 1983 to cover accidental injuries, a Bozeman attorney is taking his fight to recoup compensation for an injured student to the Montana Supreme Court.

Attorney Monte Beck filed an appeal Friday hoping to overturn a February decision by District Court Judge Thomas Olson that the school district, being a governmental entity, is immune from tort lawsuits.

Attorney Gig Tollefsen, who represents the school district, said that he had not yet seen the appeal, but he will file a response within the required 30 days.

"I expect we will see a decision on this by the end of the summer," Tollefsen said.

The Supreme Court Justices have already considered a half-dozen other appeals in similar hotly debated cases, but Beck said his appeal raises an entirely new issue.

The school district had spent $25,000 on a comprehensive liability insurance policy that specifically covered physical education and swimming instructors.

"I say that is a waiver," Beck said. "Our claim is well within their $500,000 insurance limits."

Also, according to Beck, depositions from school board members at the time show that they carried the insurance for this type of accident and that they feel some duty to compensate someone if they are injured due to negligence on the part of the school.

Terry Crowell was 15 years old on March 1, 1984, and taking part in a mandatory physical education course when she was injured, according to her lawsuit.

During a gymnastic ring exercise, Terry fell while trying to dismount. Her lawsuit states that she had no experience with the stunt she was told to do and the gymnastic instructor failed to have anyone spot her.

She fell and landed on her shoulders and neck.

She smashed a vertabrae, Beck said. "It is a permanent injury, it can't be fixed."

As she gets older, Crowell could be come humpback as a result of the injury, Beck said. The suit did not ask for a specific amount of damages.

Bush/ *from page 1*

Immunity/ *from page 1*

That does not mean government entities do not have to worry about how sloppily or carefully its employees perform, he added.

The law appears to distinguish between "legislative acts," and "administrative acts, according to Beck.

Beck defines "legislative acts" as policy setting and "administrative acts" as the carrying out of the policies. The administrative acts should not be immune from lawsuits, Beck contends.

But the Supreme Court is not distinguishing between the two, according to Beck.

"I think the Supreme Court has gone beyond what the Legislature intended," said Rep. John Mercer, R-Polson. On the other hand, Mercer added, "There are some sound public policy reasons to think that their interpretation is good... (such as) government is for benefit of all people and is also regulated by democratic institutions, therefore it is wise to keep costs as low as possible."

"It is a two-sided issue," said Gallatin County Commissioner Dave Pruitt. "With all immunity removed you have frivolous lawsuits.

"The other side is if government does do something totally wrong, it should not be immune...I think we found with total immunity removed, that that wasn't right. So the Supreme Court is putting some back. Who knows where it is going to end up."

But it is too early to start canceling liability insurance coverage, he added. "I just don't think it is stable enough to drop the insurance yet."

Rep. Dorothy Bradley, D-Bozeman, said, "You should not have a double standard. The idea of negligence in the public sector is not any different than the private sector."

"What is the difference between a privately owned building and a city building not being built properly and collapsing on someone?" she said. "Is it right that in one case you can have your day in court and the other you can't?"

All lawyers and lawmakers asked where the issue was headed, predicted the same: back to the hands of the legislators.

"I think the statute could be clearer," added Rep. Mercer, who is an attorney. "The way it is now, it can be interpreted either way."

"I don't think it is a legal issue," said County Attorney Salvagni. "I think it is a political issue. It is a matter of policy to be set by the Legislature. Legally, I agree with the court's intepretation."

IN THE LAST three months, at least three suits naming the the City of Bozeman, Gallatin County and Bozeman Senior High School have been dismissed as a result of the high court's ruling.

In a city case dismissed last month by District Court Judge Thomas Olson, a woman sued the city of Bozeman and the Medical Arts Building after she fell on an icy sidewalk.

Judge Olson reluctantly dismissd the city from the suit pointing to the Supreme Court rulings but also noting that there is case law that suggests the city could be liable.

In Gallatin County this week, a half-dozen other motions for dismissal leaning on the immunity issue are pending, according to Salvagni and Bozeman City Attorney Bruce Becker, both pointing out that they are in positions where, if it works as a defense, they are going to use it.

The Supreme Court votes have been mostly 5-2 or 4-3, according to Justice John C. Sheehy, who has consistently been one of the dissenting votes.

In one of his dissenting opinions, Justice Sheehy wrote that "(the justices) have not only excused the king; they have excused the king's men, his feudal lords and all their vassals."

IN 1972, THE state of Montana became the first in the nation to enact a constitutional provision requiring full governmental tort liability, thus eliminating the state's sovereign immunity, according to John A. Kutzman, a second year University of Montana law student.

Kutzman has just written a Montana Law Review article called, "The King's Resurrection: Sovereign Immunity Returns to Montana," which criticizes recent Supreme Court decisions. It will appear in the spring edition of the law review due out in a couple of months.

In 1974, voters gave back a bit of immunity by passing a bill that allows the Legislature to make exceptions with a two-thirds majority in each house.

Three years later, lawmakers cited skyrocketing insurance costs and passed an immunity package that set some damage caps and stated that "legislative bodies," that is a member, officer or agent of a legislative body, is immune from lawsuits if the suit stems from them just trying to do their job. There is no language defining what is an "agent."

The first chance the high c got at interpreting that langu sprang out of Gallatin County.

In 1985, W.D. Construction fi the suit claiming the county been negligent when it devia from its own subdivision plat proval procedures.

The court ruled that the cou commissioners were immune fr the suit because they were acting a "legislative body" when th made that decision.

Three years later, the co upheld a dismissal in a Broadwa County case where a county co missioner fired a county ro worker named James Bieber allegedly damaging county equ ment. The two other commissione later ratified Bieber's firing a Bieber sued for wrongful discharg

The Supreme Court ruled th the firing was a "legislative ac since the decision was made by t board.

Last year, the Supreme Cou upheld a District Court decisio involving the firing of Great Fal school janitor Vicki Peterson. Sh was fired by a district employee fo refusing to empty 55-gallon tras cans into a dumpster claiming would create an unsafe workplac and violate public policy.

The district employee's action were later ratified by the schoo board. Like Bieber, Peterson sue for wrongful discharge. And like in the Bieber case, the Supreme Court ruled the decision of the board was a "legislative act," therefore the school district was immune from the suit.

Decisions in these cases, attorney Beck said, are what point a return to the time of "the king can do no wrong."

Ex#1a
SB154
1 Feb 91

RECEIVED
JAN 4 1991
MONTANA LEGISLATIVE

ROSSBACH & WHISTON, P.C.
ATTORNEYS AT LAW

William A. Rossbach
John B. Whiston
401 North Washington Street
P. O. Box 8988, Hellgate Station
Missoula, Montana 59807

(406) 543-5156

January 3, 1991

Valencia Lane
Legislative Council
Capitol Station
Helena, MT 59620

RE: Bill Drafting Request (Legislative Immunity)
LC0414

Dear Ms. Lane:

I understand from Karl Englund that he had the chance to chat with you briefly about the retroactivity concerns that have cropped up for the above-referenced bill drafting request. I have been able to do a substantial amount of legal research on this question and it is my conclusion that a bill amending and clarifying the legislative immunity granted by MCA 2-9-111 can be retroactive.

The basic principle in Montana law is that retroactivity is not implied. "No law contained in any of the statutes of Montana is retroactive unless expressly so declared." MCA 1-2-109. However, the Montana Supreme Court has stated that this only applies to substantive amendments. Procedural amendments, that is those affecting the remedy rather than the right can be retroactively applied without the express language in the legislative enactment.

A substantive law may be applied retroactively only when it is expressly so declared by the Legislature. Boehm v. Alanon Club, 222 Mont. 373, 378, 722 P.2d 1160 (1986); Pendrod v. Hoskinson, 170 Mont. 277, 552 P.2d 325 (1976). The implication is that there is no bar to retroactive application of a substantive law except on constitutional grounds.

There has been some concern expressed over the application of Article XIII Section 1, Subsection 3 of the Montana Constitution. It does not appear to me that this language would render the

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1 Feb 9

retroactive application of the proposed legislation unconstitutional. First, by its very language, this section implicates to nonmunicipal corporations, that is business entities. The language of subsection 3 refers to transactions that would be the likely activities of such a corporation. The tenor of the Supreme Court decisions interpreting this section and its predecessor have all referred to "impairment of contracts" analyses. The proposed retroactivity of this bill drafting request would not impair any contracts.

In fact, it is more consistent to view this amendment as a procedural clarification rather than a change in the substantive law. The Missouri Supreme Court addressed an identical issue in Wilkes v. Missouri Highway and Transportation Commission, 762 S.W.2d 27 (Mo. 1988)(En. Banc). I am enclosing a copy of that decision for your review.

Briefly, the Missouri court held that an act abrogating sovereign immunity does not create a new cause of action, but rather only provides a remedy for a pre-existing case of action. It is thus procedural and may be retroactively enforced even without a legislative expression to that effect.

In sum, there is no constitutional or statutory bar to the retroactive application of clarifications to the legislative immunity section. I would suggest the following applicability language: "[this act] is effective on passage and approval and applies retroactively to all causes of action." As I said before, I have looked into this in some depth. If I can provide any additional information to assist you in this bill drafting request, please let me know.

Very truly yours,

John Whiston

JBW/ms

encl.

1 Feb 91
Exhibit #2
SB 154

January 31, 1991

Senator Richard Pinsoneault, Chairman
Senate Judiciary Committee

Re: Senate Bill No. 154 - Clarification of Legislative Immunity

Dear Senator Pinsoneault:

This is to advise you and the other members of the Judiciary Committee of my support for Senate Bill No. 154.

As the former chief legal counsel of the State Tort Claims Division, and its predecessor agency the Insurance and Legal Division, I was instrumental in the drafting and administration of the Montana Tort Claims Act from the passage of the new constitution until 1985. This included that section of the Tort Claims Act codified as 2-9-111 which provides immunity from legislative acts and omissions.

In my capacity as one of the attorneys submitting this legislation to the legislature on behalf of the executive branch, it was clearly our intention that immunity be given to local government legislative bodies only for their legislative acts. In particular, the thinking at the time was that this involved all efforts in the preparation, drafting, debate, and passage of ordinances by city councils, as well as resolutions by boards of county commissioners. At no time during the debate on this legislation, or during the work by the joint senate and house judiciary subcommittee which examined the issue from 1975 to 1977, was there ever any discussion that executive actions of local government boards would be subject to immunity.

Indeed, given the Montana Supreme Court decisions during the past three years that have conferred sovereign immunity on virtually every type of executive action of a local governing board, we now see a resurrection of the very same dilemmas that gave rise to the constitutional debate concerning abolition of sovereign immunity in the first instance. For example, cheerleaders and students who might be hurt by defective facilities or negligent crowd control at a local school district sporting event have no right of recovery, while the very same injuries

EXHIBIT #2
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Testimony of Michael J. Sherwood
Montana Trial Lawyers Association
Supporting Senate Bill 154

We support this bill for the reasons set forth by the other proponents. I would like to confine my testimony to two issues:

1. Can the legislature pass this bill retroactively?
2. What is the effect of retroactivity upon those cases that have gone to final judgment and those claims now barred by the statute of limitations.

Attached to this testimony is a copy of a memorandum prepared by John Whiston, counsel for Nani Linder, to Valencia Lane, staff counsel for this committee. That memorandum sets forth the propriety of enacting this legislation retroactively. In short, it states that the legislature has the power to do so.

Retroactive application would mean, however, that all cases previously filed and reduced to final judgment would not be resurrected. The language contained in the retroactive application clause specifically states this. In addition, all cases upon which the statute of limitations has run would likewise not be resurrected. See Opinions of the Montana Attorney General, Volume 42, Opinion No. 99 and the authority cited therein. The retroactive passage of legislation does not revive a cause of action to which the bar of the statute of limitations has attached.

Please vote "do pass" on Senate Bill 154, and please preserve the retroactive application clause contained therein.

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2-1-91
SB 154

Re: Senate Bill No. 154

occurring at a unit of the Montana University system will allow full recovery. The same is true for any claims that arise out of premises maintenance or the actions of staff in carrying out the executive functions of the board. Surely, neither the members of the legislature or the constitutional convention delegates would agree that the recovery for injuries sustained by our citizens should be dependent on whether one was injured by a county employee or a state employee!

In my opinion, if one were to poll the members of the joint House and Senate Judiciary subcommittee who thoroughly examined these issues between the 1975 and 1977 sessions of the legislature, I doubt that you could find one participant who foresaw this dichotomy in our law.

For these reasons I urge you and the other members of the committee to pass Senate Bill No. 154.

Very truly yours,

JMY/pes J. Michael Young

1 February
SB 154

STATEMENT OF MARY FITZPATRICK

Re: Senate Bill 154

My name is MARY FITZPATRICK. On March 4, 1985, I went to the Memorial Gymnasium in Anaconda, Montana, to pick up my son from wrestling. My son was involved in the AAU Wrestling program. When I went to pick up my son, it was dark and it was a typical winter night. It had snowed that morning. One of the conditions for allowing the AAU wrestlers to use the Memorial Gymnasium for practice was that the alley entrance to the gymnasium be used. Parents and participants were directed by school authorities not to use the well lighted and well maintained front or side entrances. The alley entrance to the gymnasium was poorly lighted and maintained. In order to gain access to the gymnasium, I had to walk down a very steep set of concrete stairs. The stairs were cracked, chipped and rounded. The janitor had yet to clean the stairs of accumulated ice and snow despite the passage of several hours of time. I fell down those stairs that night. My injuries were severe. I have had to have surgery for the removal of two of my discs in my low back. I have suffered severe pain, incurred tremendous medical expenses and I have been unable to return to work since my injuries. My condition is permanent. I brought an action against the School District so that I could pay my medical expenses and receive compensation for

Ex. 3
2/1/91
SB 154

some of the losses that I suffered. The School District had a million dollars of insurance coverage. My lawsuit was dismissed because the District Court and the Montana Supreme Court said that the Schood District was immune from suit. They said that the failure to maintain the stairway, the failure to provide lighting, the failure to clean the stairs and the failure to allow me to use the front entrance was a legislative act. I don't understand. Our schools and gymnasium are for use by the public. The public is invited to activities in these buildings. If someone is injured as a result of negligence, the School District, or its insurance carrier, should be responsible. My husband and I are struggling to pay the enormous medical expenses we have incurred. Without my income, we are barely able to make ends meet. My entire life has changed as a result of my injuries. Yet, an insurance company was able to walk away from its responsibility and laugh all the way to the Bank. Please do not allow this to happen to anyone else.

DATED this 1st day of February, 1991.

Mary Fitzpatrick

MARY FITZPATRICK

THE HOME
INSURANCE
COMPANY

MAR 02 1990

SD/54

6000 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111

303-740-1900

February 26, 1990

R.J. Pinsoneault
Attorney at Law
P.O. Box 250
St. Ignatius, MT 59865

RE: Claim #: 441-L-708191/151
Insured: School District No. 28
Claimant: Morigeau
Date of Occurrence: 1/11/86

Dear Mr. Pinsoneault:

We have received the Summons and Complaint in the lawsuit of Morigeau et al v. School District No. 28 et al.

The case has been referred to Jim Vidal and John Gordon of Murray, Kaufman, Vidal & Gordon, P.O. Box 728, Kalispell, Montana, 59403. Their phone number is 406-755-5700.

The Complaint prays for an unspecified amount of damages. The policy of insurance with The Home Insurance Company is for $1,000,000 combined single limit. If damages should be awarded in excess of the policy limits, Home Insurance would not be liable for the excess that would be your responsibility.

We invite your attention to this so that you can consider whether you wish to retain an attorney at your own expense to join in representing you. If so, we would be glad to have your attorney work with Mr. Vidal and Mr. Gordon in preparing and defending this lawsuit. Your representation by Mr. Vidal and Mr. Gordon is limited to preparation for and defense of the case at trial. The matter of settlement remains within the discretion of Home Insurance pursuant to the policy provisions. It it possible that you may disagree with the approach taken by Home Insurance. If so, you or your personal attorney should communicate directly with me.

The attorney appearing for you will require your assistance from time to time. If the case goes to trial he will meet with you in advance for a detailed discussion. In the interim you should not discuss this case except with your attorneys or an authorized representatives of The Home Insurance Company.

Exhibit 4
2-1-91
SB 154

If new information concerning the case should come to your attention, please contact your attorneys and Home Insurance Company immediately.

Sincerely,

Mitch Roberts
Claims Dept.

MR/ht132

cc Harold McPherson
School District No. 28
St. Ignatius, MT 59865

5879
2-1-91

John R. Gordon
MURRAY, KAUFMAN, VIDAL & GORDON & OGLE, P.C.
Office and Post Office Address:
22 Second Avenue West, Suite 4000
P. O. Box 728
Kalispell, Montana 59903-0728

Telephone: (406) 755-5700

Attorneys for Defendants

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

JEREMIAH MORIGEAU, a minor, by JACKIE SPIDEL and CHARLES MORIGEAU, as his parents and general guardians, and JACKIE SPIDEL and CHARLES MORIGEAU, Individually, Plaintiffs, vs. LAKE COUNTY SCHOOL DISTRICT NO. 28 OF ST. IGNATIUS, MONTANA, AND THE BOARD OF TRUSTEES OF LAKE COUNTY SCHOOL DISTRICT NO. 28 OF ST. IGNATIUS, and RICHARD PINSONEAULT, JOHN McCLURE, JR., RANDALL CORDIS, LOIS DELANEY and THERIN "BUD" MAHLE, individually and as members of the Board of Trustees, HAROLD McPHERSON, Superintendent of Lake County School District No. 28, DOUGLAS REISIG, Principal of Lake County School District No. 28, and GLEN CATES, as Custodian/Employee of the St. Ignatius High School, Defendants.	Case No. DV-89-13 ANSWER NOTE: DATE OF INCIDENT WAS JANUARY 11, 1986.

Defendants allege:

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SB154

FIRST DEFENSE

1. The complaint fails to state a claim against defendants upon which relief can be granted.

SECOND DEFENSE

2. As to the allegations of paragraph I of the complaint, defendants admit that Lake County School District No. 28 of St. Ignatius Montana, and The Board of Trustees of Lake County School District No. 28 of St. Ignatius, are governmental entities with their principal place of business in Lake County, Montana. Defendants further admit that each of the individual defendants are residents of Lake County, Montana.

3. As to the allegations of paragraph II-1. of the complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

4. As to the allegations of paragraph II-2. of the complaint, defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District No. 28 admit that prior to the alleged accident certain boards were removed from the bleachers in the St. Ignatius High School gymnasium; allege the removal was a part of customary and standard maintenance procedure, and deny each and every other allegation contained in paragraph II-2; all of the other defendants deny each and every allegation contained in paragraph II-2.

5. As to the allegations of paragraph II-3. of the complaint, defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District

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No. 28 admit they had a duty to provide safe seating in its gymnasium, and deny each and every other allegation contained in said paragraph II-3.; all of the other defendants deny each and every allegation contained in paragraph II-3.

6. As to the allegations of paragraph II-4. of the complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

7. As to the allegations of paragraphs II-5, 6, 7, 8, and 9 of the complaint, defendants deny each any every one.

8. As to the allegations of paragraphs III-1, 2, 3, and 4, of the complaint, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore deny the same.

9. As to the allegations of paragraph III-5 of the complaint, defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District No. 28 admit they had a duty to provide safe seating in its gymnasium, and deny each and every other allegation contained in said paragraph III-5; all of the other defendants deny each and every allegation contained in paragraph III-5..

10. Defendants deny each and every allegation contained in paragraphs III-6, 7, 8, 9, 10, and 11 of the complaint.

FIRST AFFIRMATIVE DEFENSE
(Contributory Negligence)

11. Defendants affirmatively allege that the injuries, if any, mental and physical pain and suffering, if any, and economic loss, both past, present and future, if any, sustained by

plaintiffs, are solely and proximately the result of the negligence of plaintiffs and that such negligence exceeds in all respects any negligence attributed to defendants.

SECOND AFFIRMATIVE DEFENSE
(Intervening cause)

12. Plaintiffs' injuries and damages, if any, were not proximately caused by any act or omission, if any, of defendants and further, any such injuries and damages were solely caused by the superseding and intervening negligence of persons or entities other than these defendants, and therefore these defendants are not liable to plaintiffs.

THIRD AFFIRMATIVE DEFENSE
(Statutory Immunity)

13. At all times material to the allegations of the complaint, the defendants Lake County School District No. 28 of St. Ignatius and The Board of Trustees of Lake County School District No. 28 were and are now a school district created and established under the laws of the State of Montana; that all of remaining individual defendants are either members of the Board of Trustees or officers, agents or employees of said school district or board who were acting with the scope and course of that status; that as such each of the defendants is immune from suit for any act or omission of the said school district, its members, officers or agents pursuant to Section 2-9-111, M.C.A.

WHEREFORE, having fully answered the complaint, defendants pray that judgment be entered in favor of said defendants and against plaintiffs and that said defendants have and recover their

costs incurred herein, together with such other relief as to the court may seem just.

Dated April 4th, 1990.

MURRAY, KAUFMAN, VIDAL, GORDON & OGLE, P.C.

By: _____
John R. Gordon
Attorneys for Defendants

CERTIFICATE OF MAILING

I, Connie J. Walsh, one of the legal secretaries of the law firm of MURRAY, KAUFMAN, VIDAL, GORDON & OGLE, P.C., do hereby certify that on April 4, 1990, I mailed a true and correct copy of the foregoing document, first class postage prepaid, to:

Rebecca T. Dupuis
Attorney at Law
P. O. Box 249
Polson, Montana 59860

Teresa Melcher Thompson
Attorney at Law
210 No. Higgins, Suite 326
Missoula, MT 59802

_____
Connie J. Walsh

Exhibit #5
SB154
2-1-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 1st day of February, 1991.

Name: David N. Hull

Address: P.O Box 534
Helena, Mt 59624

Telephone Number: ~~City of Helena~~ 443-6036

Representing whom?

City of Helena

Appearing on which proposal?

SB 154

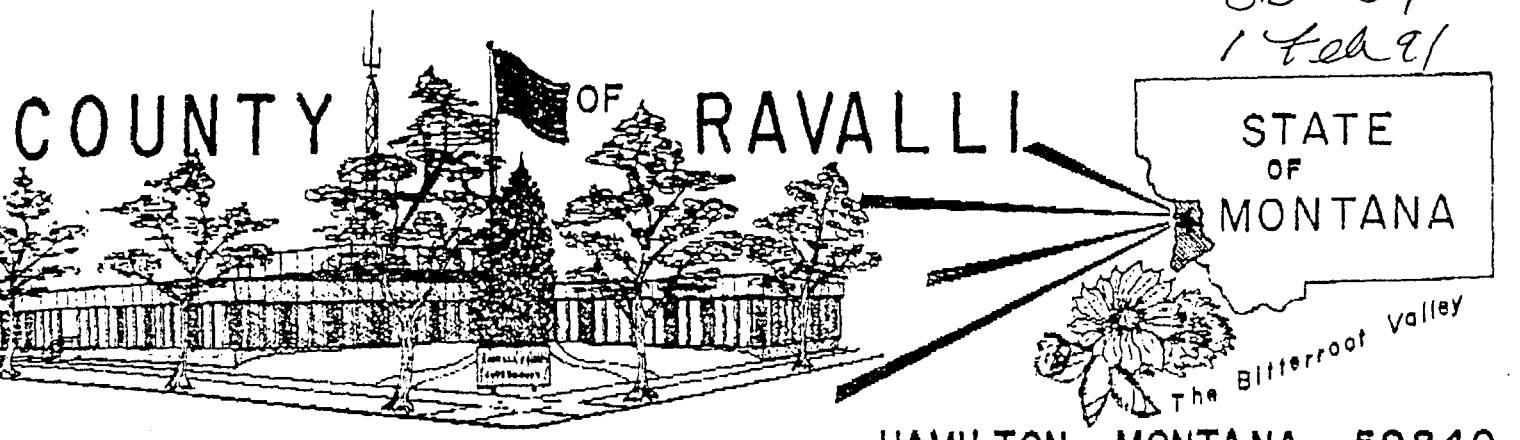
Do you: Support?____ Amend? V Oppose? V

Comments:

The city should not be placed in a position of being sued - and using taxpayer dollars to respond to the suit - for actions that may occur as a result of the financial constraints placed upon the city by CI-105 or increasing federal & state imposed duties. I support the amendments as proposed by Alec Hanson

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

SB 154
1 Feb 91



HAMILTON, MONTANA 59840

Courthouse Box 5001
February 1, 1991

Judiciary Committee
Room 325
State of Montana
Capitol Station
Helena, MT 59621

RE: SB 154 Clarify Legislative Immunity
Hearing Room 325 10 AM

To Whom It May Concern:

For the record, the members of the BOARD OF COUNTY COMMISSIONERS, and the Ravalli County Attorney, Ravalli County, Montana would like to submit the following testimony regarding the above referenced bill. We unanimously OPPOSE SB 154 regarding the Clarification of Legislative Immunity. Please DO NOT PASS this bill.

Sincerely,
BOARD OF COUNTY COMMISSIONERS
Ravalli County, Montana

Jerry L. Allen
Jerry L. Allen, Chairman

absent
Steven D. Powell, Member

Allen C. Horsfall Jr.
Allen C. Horsfall, Jr., Member

ns

SB 154
2-1-91

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 1st day of Feb., 1991.

Name: Carl Hatch

Address: 39 Neill Ave.
Helena Mt. 59601

Telephone Number: 442-7830

Representing whom?

Self- James + Kathy Sanders

Appearing on which proposal?

SB 154

Do you: Support? ✓ Amend?____ Oppose?____

Comments:

my clients were not able to sue for long term damage to their real property which was damaged when pollutants from a landfill dump contaminated their water supply. The landfill was ruled to be an alter-ego of the County-Commission because ALL matters had to be authorized by the commissioners. They controlled what the landfill operators did or had the power to control, Home agency.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE 2-1-91

COMMITTEE ON Sen Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Nani Linder		SB 154	✓	
RON LINDER		154	✓	
Monte Beck	self	154	✓	
BEN EVERETT	self	154	✓	
MARY FITZPATRICK	self	154	✓	
David Hull	City of Helena	154		✓
MARK Richardson	City of Miles City	154		✓
Jim Wysocki	City of BOZEMAN	SB 154		X
Gene Vuckovich	Anaconda/Deer Lodge Co	154		✓
Jim Jensen	MEIC	154	✓	
Ed Hill	MBCC	196	✓	
Bob Butorac	M.S.P.O.A	196	✓	
Bob Butorac	M.S.P.O.A	114	✓	
JIM DeROUT	FLATHEAD SHERIFF	196	✓	
DAN RUSSELL	Corrections DO	196	✓	
TOM FRANK	FLATHEAD Co SHERIFF & MSPOA	196	✓	
Phil Campbell	Mont. Ed. Assoc.	154	✓	
Teresa Reardon	MFT	154	✓	
Jesse W Long	School Adm of MT	154		X
Bruce W. Moerer	MSBA	154		X
Stan Bradshaw	Self	154	✓	
Carol Futch	Self + clients	154	✓	
Gordon Morris	MACO	154	196	154 X
Michael Sherwood	MTLA	154	✓	
Marlene Mallen	MMIA	154		✓
JAMES Tillotson	City of Billings	154		✓
	(in) #112 - Support	114	✓	

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 13, 1991, at 10:00 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Steve Doherty (D)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Valencia Lane (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion:

CONFIRMATION HEARING ON JUDGE JAMES E. PURCELL

Presentation and Opening Statement:

Rick Bartos, Chief Legal Counsel for Governor Stan Stephens, told the Committee it was a privilege and honor to ask for favorable consideration of the nomination of Jim Purcell who was appointed to succeed District Judge Arnold Olson, deceased.

Mr. Bartos said Judge Purcell was born in Helena in December, 1929, and has resided in Butte since a very early age. He said the Judge was educated in the Butte school system and attended the then Montana College of Mineral Sciences in Butte. Mr. Bartos continued, saying, Judge Purcell earned his BS in Journalism, and his JD from the University of Montana Law School in 1958. He said the Judge was admitted to the Bar to practice law that same year.

Closing by Mr. Bartos:

Rick Bartos told the Committee he had participated in six previous nominations, and said this nomination has demonstrated unsurpassed support of Judge Purcell. On behalf of Governor Stephens, Mr. Bartos asked the Committee to support the nomination.

EXECUTIVE ACTION ON CONFIRMATION HEARING

Motion:

Senator Mazurek commented that the procedure used for confirmation in State Administration is different this year. He said the Committee needs to request that a resolution be drafted.

Senator Mazurek made a motion that a resolution be drafted for consideration by the Committee, recommending the confirmation of Judge Purcell to the 2nd Judicial District of Butte/Silverbow.

Discussion:

There was no discussion.

Amendments, Discussion, and Votes:

There were none.

Recommendation and Vote:

The motion made by Senator Mazurek carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 154

Motion:

Discussion:

Valencia Lane explained that amendments to the bill were provided Friday, February 8.

Senator Towe said he believed the retroactivity part of the bill should be limited. He commented that one case the Committee heard would still be open, and the second has been closed (except under rule 60). He said he believes remedy should be through a special claim through the Legislature.

Senator Towe read the proposed amendment (Exhibit # 3) and made a motion that it be approved.

Senator Halligan asked why the retroactivity clause needs to be kept in the bill. Senator Towe replied it must be clarified or the logical presumption will the time the accident happened. He said the key is, "Has it been reduced to judgment?"

Valencia Lane reported that it could be interpreted that the law in effect at the time of the accident would rule in the case, and said she did not know if Senator Towe's language applies to settlement. Senator Towe replied that is already covered.

Senator Grosfield asked if it would help to say "reduced to final judgment" on page 3. Senator Towe replied he would agree to that language.

Senator Svrcek said he would like to back away from the amendments and get the Committee's sense on retroactivity, as there are more than two cases which need to be addressed. He said that if retroactivity were pulled altogether, it would preclude the Helena couple with the bad well from taking action against the responsible governmental entity. Senator Towe replied he did not believe that would be the effect. He stated that, unless the incident has passed the statute of limitation, those injured can still file as their case hasn't been reduced to judgment.

Senator Svrcek asked what would happen if no action has been filed as of this date. Senator Towe replied it would apply to whether the case has or has not been filed, and only those cases which have received final judgment are precluded.

Senator Mazurek questioned whether the Committee can "get away without retroactive language, since the bill deals with common law as it is now, which is a limited retroactivity". Senator Towe replied that it applies retroactively to the act within 1-2-109, MCA.

Senator Mazurek said he did not know if it were fair, but he did not want the retroactivity to be wide open.

Valencia Lane asked Senator Towe if he wanted to say "on or before the effective date of this act".

Senator Yellowtail asked if language could say "by the effective date". Senator Towe restated his motion as follows: "this act is effective upon passage and applies retroactively within the meaning of _____, MCA, to cause of actions not reduced to judgment on or before the effective date of the act." The motion carried unanimously.

Chairman Pinsoneault referred to the school board amendments (Exhibit #4). Valencia Lane said it may be appropriate to say "or school board policy". She said she was concerned with including "or other official action taken by school boards". She further

stated that Title 20 of statute lists duties of school boards, and that the amendment would be appropriate.

Chairman Pinsoneault said he would like to extend as much immunity to school boards as possible since their official duties are mandated by law, 20-3-324, MCA.

Senator Towe commented that the Committee has worked hard to get as far as it has on this issue, and said he did not understand the concerns. He said he believes the authors of the bill want to give immunity where it is entitled.

Senator Harp said he agreed with the amendment, but wanted to look at the duties of school boards. Senator Mazurek stated there are three pages of duties, covering everything, in the Code.

Chairman Pinsoneault said he had the same problem with immunity with cities and towns. He told the Committee his hope is to find middle ground.

Senator Grosfield said that without the amendment, it is clear that subsection (a) applied to policy decisions of school boards. Senator Towe replied that the declaration of a public policy clearly applies.

Chairman Pinsoneault noted that subsection (b) states explicitly that school boards be included.

Senator Towe commented that communities and school boards declare public policy, but don't make it law. He said buying a vehicle is not legislative action, but keeping kids in school for certain periods is.

Senator Grosfield asked if it would then be a policy decision if a school decided it did not have the money to keep ice off the steps. Senator Towe replied it would be.

Senator Halligan said he disagreed with Senator Towe's interpretation. He stated that the specific administrative action of not shoveling ice is negligence. Senator Towe replied that is exactly what he was trying to say.

Senator Pinsoneault submitted the amendments prepared by Alec Hansen and commented that they are "pretty verbose". Valencia Lane advised the Committee that these amendments are the same provided by Mr. Hansen at the hearing of SB 154.

Alec Hansen told the Committee the amendments were put together by Stan Kaleczyk, and said there are five amendments in the final set. Mr. Kaleczyk proceeded to go through the amendments for the Committee (Exhibit # 5).

Amendments, Discussion, and Votes:

Senator Towe made a motion that amendments 1, 2, and 3 be approved.

Senator Grosfield suggested modifying amendment 2, lines 17-18. He stated that conservation districts are referred to as local government entities in some places in statute, and as a subdivision of state government in others. He asked if "conservation districts" could be inserted before "school districts".

Senator Mazurek asked what term would encompass all such districts. Valencia Lane replied "political subdivisions of the state" is usually used.

Senator Mazurek stated that the language could be broadened as long as if soil conservation districts have legislative powers, it doesn't matter.

Senator Halligan asked what proper language would be. Mike Sherwood, Montana Trial Lawyers, replied he believes language should say "any other local government entity", in order to make amendments 2 and 3 consistent.

Senator Towe suggested adding "or other political subdivisions of it", and said he didn't believe it would actually be necessary.

Senator Mazurek commented that governmental entity should be defined as an entity an not referred to by its power. He said this should be done in subsection (b) and not subsection (a).

Chairman Pinsoneault advised the Committee that Senator Crippen suggested a subcommittee be appointed to study this matter. He appointed Senators Svrcek and Grosfield, and asked Senator Towe to chair.

Recommendation and Vote:

There was none.

ADJOURNMENT

Adjournment At: 12:00 noon

Senator Dick Rinsoneault, Chairman

Joann T. Bird, Secretary

DP/jtb

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 13 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

2-13-91
SB 154

Amendments to Senate Bill No. 154
First Reading Copy (White)

Requested by Senator Pinsoneault
(League of Cities and Towns)
For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1991

1. Page 1, line 17.
Strike: "includes"
Insert: "means only"

2. Page 1, line 18.
Strike: "and"
Following: "districts"
Insert: ", and any other local government entity vested with legislative power by statute"

3. Page 1, lines 21 through 23.
Following: "and" on line 21
Strike: remainder of line 21 through "boards" on line 23
Insert: "that branch or portion of any other governmental entity empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves"

4. Page 2, line 16.
Following: line 15
Insert: "(4) A governmental entity and its members, officers, employees, and agents are immune from suit for damages arising from the undertaking or failure to undertake any judicial or quasi-judicial act, including but not limited to the approval or denial of a license, permit, or zoning matter, when an administrative remedy is available. This provision does not preclude judicial review, otherwise allowed by law, of any administrative decision.

(5) (a) A governmental entity and its members, officers, employees, and agents are immune from suit arising out of any defect, including but not limited to lack of repair or lack of maintenance, of any public area or public works when:

(i) the governmental entity did not have prior notice of the defect; or

(ii) the legislative body, in the face of competing financial demands, had duly adopted a plan of upgrade, maintenance, or repair of certain public areas or public works and the suit alleges a defect in a public area or public work that is either included in or excluded from the plan.

(b) The immunity provided by this section does not serve to immunize a governmental entity from negligence arising out of acts or omissions of its employees in carrying out ministerial functions.

(c) As used in this subsection (5), the following definitions apply:

(i) "Public areas" means any highway, street, alley, sidewalk, boulevard, parking area, causeway, bridge, airport runway or taxiway, or any other public place or grounds dedicated to public use and all appurtenances necessary for the control of the ways, including but not limited to street signs, traffic lights and controls, parking meters, and guardrails.

(ii) "Public works" includes but is not limited to any sewage disposal system, water supply system, and garbage disposal system.

(6) A governmental entity and its members, officers, employees, and agents are immune from suit for any act or omission arising out of the operation of a 911 emergency number service, including but not limited to answering and dispatching the 911 telephone call and responding to the 911 telephone call location. This immunity does not apply to gross negligence or willful and wanton acts or omissions.

(7) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity may not be considered to waive the immunity provided by this section."

Renumber: subsequent subsection

EXHIBIT 5
2-13-91
SB 154

Amendments to Senate Bill No. 154
First Reading Copy (White)

Requested by Senator Towe
For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1991

1. Title, line 11.
Strike: "A RETROACTIVE"
Insert: "AN"

2. Page 3, lines 2 and 3.
Following: "applies" on line 2
Strike: remainder of line 2 through "1-2-109," on line 3

3. Page 3, lines 3 and 4.
Following: "action" on line 3
Strike: remainder of line 3 through "been" on line 4

4. Page 3, line 4.
Strike: "by"
Insert: "on or after"

Ex. 7
SB 154
2-13-91

Amendments to Senate Bill No. 154
First Reading Copy (White)

Requested by Senator Pinsoneault
(School Boards Association)
For the Committee on Judiciary

Prepared by Valencia Lane
February 7, 1991

1. Page 2, line 1.
Following: "policy"
Insert: "or school board policy or other official action required to be taken by a school board"

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dick Pinsoneault, on February 16, 1991, at 8 a.m.

ROLL CALL

Members Present:

Dick Pinsoneault, Chairman (D)
Bill Yellowtail, Vice Chairman (D)
Robert Brown (R)
Bruce Crippen (R)
Lorents Grosfield (R)
Mike Halligan (D)
John Harp (R)
Joseph Mazurek (D)
David Rye (R)
Paul Svrcek (D)
Thomas Towe (D)

Members Excused: none

Staff Present: Greg Petesch (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: Senator Crippen advised the Committee that, based on his experience as a committee chairman, it would be best to avoid long evening meetings, as they appear to be nonproductive. He commented that if members read information ahead of time, and if hearing time is limited, more time would be available for executive action. Senator Brown added that the Committee could also order sandwiches and work through lunch.

EXECUTIVE ACTION ON SENATE BILL 154

Motion:

Discussion:

Amendments, Discussion, and Votes:

Senator Towe reported that the Subcommittee adopted 1, 2, 3, and 4 of the amendments proposed by the Montana League of Cities and Towns. He said the Subcommittee did not accept subsection (4), nor amendment 5, but did adopt amendment 6 (911 emergency). Senator Towe continued, and said the Subcommittee adopted self-insurance coverage, and Greg Petesch reported that amendment 7 is included in school board immunity.

Senator Svrcek made a motion that the proposed amendments be approved. The motion carried with all members voting aye except Senator Halligan. Senator Doherty was absent.

Senator Mazurek said he was curious as to why subsection (4) was not adopted by the Subcommittee. Greg Petesch replied that the adoption of zoning plans is a legislative act. Senator Towe stated that the Subcommittee talked about getting into court before administrative remedy is completed, and decided it was not necessary.

Senator Mazurek made a motion that subsection (4) as it was written in the draft, be reinserted in the bill "immunity from suit for damages" only. As an example, he said that if someone did not like a zoning decision they may want to sue the city for damages. Senator Svrcek reminded Senator Mazurek that he made a motion to this effect during prior executive action on SB 154, and it was explained then that these are quasi-judicial or executive and not legislative acts.

Greg Petesch advised the Committee that SB 154 is here because the Supreme Court said everything is a legislative act. He commented that Representative Whalen has a bill addressing this issue. Senator Mazurek withdrew his motion.

Recommendation and Vote:

Senator Towe made a motion that SB 154 DO PASS AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON SENATE BILL 246

Motion:

Senator Grosfield made a motion that SB 246 DO PASS.

Discussion:

Senator Svrcek requested a sense of the Committee on extending review of liability limits for another four to six years. He commented that from a public policy standpoint, maybe the Legislature should review these limits periodically.

ROLL CALL

SENATE JUDICIARY COMMITTEE

52nd LEGISLATIVE SESSION -- 1991 Date 14 Feb 91

NAME	PRESENT	ABSENT	EXCUSED
Sen. Pinsoneault	✓		
Sen. Yellowtail	✓		
Sen. Brown	✓		
Sen. Crippen	✓		
Sen. Doherty		✓	
Sen. Grosfield	✓		
Sen. Halligan	✓		
Sen. Harp	✓		
Sen. Mazurek	✓		
Sen. Rye	✓		
Sen. Svrcek	✓		
Sen. Towe	✓		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 154 (first reading copy -- white), respectfully report that Senate Bill No. 154 be amended and as so amended do pass:

1. Title, line 9.
Following: "ACTIONS"
Insert: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE"
Following: ";"
Insert: "CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY;"

2. Page 1, line 17.
Strike: "includes"
Insert: "means only"

3. Page 1, line 18.
Strike: "and"
Following: "districts"
Insert: ", and any other local government entity or local political subdivision vested with legislative power by statute"

4. Page 1, lines 21 through 23.
Following: "and" on line 21
Strike: remainder of line 21 through "boards" on line 23
Insert: "that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves"

5. Page 2, line 1.
Following: ";"
Strike: "and"

6. Page 2, line 3.
Following: ";"
Insert: "or"

7. Page 2, line 4.
Following: line 3
Insert: "(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1),"

8. Page 2, line 16.
Following: line 15
Insert: "(4) A governmental entity and its members, officers, employees, and agents are immune from suit for any act or omission arising out of the operation of a 911 emergency number service, including but not limited to answering and dispatching the 911 telephone call and responding to the 911 telephone call location. This immunity does not apply to gross negligence or willful and wanton acts or omissions.

(5) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section."
Renumber: subsequent subsection

9. Page 3, lines 3 and 4.
Following: "action" on line 3
Strike: remainder of line 3 through "1977," on line 4

10. Page 3, line 4.
Following: "to"
Insert: "final"
Following: "judgment"
Strike: "by"
Insert: "on or before"

Signed: _____
Richard Pinsoneault, Chairman

2-16-91
Amd. Coord.

2-16-91
Sec. of Senate

3609303C.Sji

16 Feb

Amendments to Senate Bill No. 154
First Reading Copy (White)

Requested by Subcommittee

For the Committee on Judiciary

Prepared by Greg Petesch
February 15, 1991

1. Title, line 9.
Following: "ACTIONS"
Insert: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE"
Following: ";"
Insert: "CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY;"

2. Page 1, line 17.
Strike: "includes"
Insert: "means only"

3. Page 1, line 18.
Strike: "and"
Following: "districts"
Insert: ", and any other local government entity or local political subdivision vested with legislative power by statute"

4. Page 1, lines 21 through 23.
Following: "and" on line 21
Strike: remainder of line 21 through "boards" on line 23
Insert: "that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves"

5. Page 2, line 1.
Following: ";"
Strike: "and"

6. Page 2, line 3.
Following: ";"
Insert: "or"

7. Page 2, line 4.
Following: line 3
Insert: "(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);"

Ex. 1
2-16-91
SB 154

8. Page 2, line 16.
Following: line 15
Insert: "(4) A governmental entity and its members, officers, employees, and agents are immune from suit for any act or omission arising out of the operation of a 911 emergency number service, including but not limited to answering and dispatching the 911 telephone call and responding to the 911 telephone call location. This immunity does not apply to gross negligence or willful and wanton acts or omissions.

(5) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section."
Renumber: subsequent subsection

9. Page 3, lines 3 and 4.
Following: "action" on line 3
Strike: remainder of line 3 through "1977," on line 4

10. Page 3, line 4.
Following: "to"
Insert: "final"
Following: "judgment"
Strike: "by"
Insert: "on or before"

CHAIRMAN--BILL STRIZICH
NORMAL SCHEDULE==> SITE: ROOM 312-2 DAYS: M,T,W,T,F TIME: 8:00 A.M.

SECRETARY-JEANNE DOMME

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
SB0057	1/26	2/08		CONCUR AS AMENDED		2/11
YELLOWTAIL JR., BILL			ALLOW CERTAIN CRIMINAL PROCEDURES TO BE CONDUCTED BY TELECOMMUNICATION			
SB0058	2/09	3/08		CONCUR AS AMENDED		3/12
YELLOWTAIL JR., BILL			REVISE LAW RELATING TO PAYMENT OF MEDICAL/CONFINEMENT COSTS OF INCARCERATED			
SB0059	1/24	2/07		CONCUR		2/11
YELLOWTAIL JR., BILL			PROHIBIT PLACEMENT OF YOUTH NEEDING SUPERVISION IN JAIL OR SECURE DETENTION			
SB0068	1/25	2/05		CONCUR		2/05
KENNEDY, JR., ED			UPDATE DANGEROUS DRUG SCHEDULES			
SB0087	1/29	3/20		CONCUR		3/20
BROWN, BOB			CLARIFY JURISDICTION OF SMALL CLAIMS DIVISION OF DISTRICT COURTS			
SB0125	2/05	3/20		TABLED ON 03/20		
BROWN, BOB			REQUIRE LOAN AND CREDIT AGREEMENTS TO BE IN WRITING TO BE ENFORCEABLE			
SB0140	1/31	2/05		CONCUR		2/06
WATERMAN, MIGNON			INCLUDE ANABOLIC STEROIDS AS A SCHEDULE III DRUG			
SB0145	3/04	3/11		TABLED ON 03/11		
BROWN, BOB			ALLOW NEW TYPE OF GAMBLING ONLY BY VOTE OF THE PEOPLE			
SB0154	3/04	3/13		CONCUR AS AMENDED		3/22
NATHE, DENNIS			CLARIFY LEGISLATIVE IMMUNITY			
SB0170	2/05	3/07		CONCUR AS AMENDED		3/12
VAUGHN, ELEANOR			SEXUAL OFFENDER PAY FOR EVALUATION; ESTABLISH QUALIFICATIONS OF EVALUATORS			
SB0196	2/09	3/06		CONCUR AS AMENDED		3/07
BECK, TOM			PROVIDE FOR CONFINEMENT OF INMATES WHEN INSTITUTION'S CAPACITY EXCEEDED			

SENATE BILL NO. 154

INTRODUCED BY NATHE, LYNCH, COBB,

WHALEN, L. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS TAKEN BY THOSE BODIES; CLARIFYING THAT GOVERNMENTAL ENTITIES ARE NOT IMMUNE UNDER THE LEGISLATIVE IMMUNITY STATUTE FOR NONLEGISLATIVE ACTIONS OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE; CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" ~~includes~~ MEANS ONLY the state, counties, municipalities, and school districts, AND ANY OTHER LOCAL GOVERNMENT ENTITY OR LOCAL POLITICAL SUBDIVISION VESTED WITH LEGISLATIVE POWER BY STATUTE;

(b) the term "legislative body" ~~includes~~ means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and ~~any local governmental entity given legislative powers by statute, including school boards,~~ THAT BRANCH OR PORTION OF ANY OTHER LOCAL GOVERNMENTAL ENTITY OR LOCAL POLITICAL SUBDIVISION EMPOWERED BY LAW TO CONSIDER AND ENACT STATUTES, CHARTERS, ORDINANCES, ORDERS, RULES, POLICIES, RESOLUTIONS, OR RESOLVES;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy; and

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; OR

(C) ACTIONS BY A SCHOOL BOARD THAT RESULT IN ADOPTION OF SCHOOL BOARD POLICIES PURSUANT TO 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for ~~an~~ a legislative act or omission ~~of~~ by its legislative body, or ~~a~~ any member, ~~officer, or agent thereof~~ or staff of the legislative body, engaged in legislative acts.

(3) ~~A~~ Any member, ~~officer,~~ or ~~agent~~ staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with ~~the introduction or consideration of legislation or~~

action-by legislative acts of the legislative body.

(4) A GOVERNMENTAL ENTITY AND ITS MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE FROM SUIT FOR ANY ACT OR OMISSION ARISING OUT OF THE OPERATION OF A 911 EMERGENCY NUMBER SERVICE, INCLUDING BUT NOT LIMITED TO ANSWERING AND DISPATCHING THE 911 TELEPHONE CALL AND RESPONDING TO THE 911 TELEPHONE CALL LOCATION. THIS IMMUNITY DOES NOT APPLY TO GROSS NEGLIGENCE OR WILLFUL AND WANTON ACTS OR OMISSIONS.

(5) THE ACQUISITION OF INSURANCE COVERAGE, INCLUDING SELF-INSURANCE OR GROUP SELF-INSURANCE, BY A GOVERNMENTAL ENTITY DOES NOT WAIVE THE IMMUNITY PROVIDED BY THIS SECTION.

~~(4)~~(6) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation."

NEW SECTION. **Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 3. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action ~~arising-on-or-after-July-1,~~ ~~1977,~~ that have not been reduced to FINAL judgment ~~by~~ ON OR

BEFORE [the effective date of this act].

-End-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 13, 1991, at 8:08 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Legislative Council
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SB 304
EXTENDING VALID. OF CONVEYANCES RECORDED AFTER DEFECTIVE EXEC.

Presentation and Opening Statement by Sponsor:

SEN. STIMATZ, SENATE DISTRICT 35, stated that SB 304 is a technical correction bill and that the correction hasn't been done during the last few sessions because of an oversight. He stated that the bill validates and corrects a measure to pick up any slight errors that have been made in the notary public instruments made in real property. He stated that if there is no

action pending involving notary acknowledgment previous to October 1, 1991 then this bill corrects all those inadvertent errors.

Proponents' Testimony:

Bill Gowen, Montana Land Title Association, stated that SB 304 corrects and validates notaries acknowledgments to real property incidents that may have been mis-stated or have any technical defects. He stated that is basically what the bill does and he would be happy to answer any questions from the committee.

Opponents' Testimony: none

Questions From Committee Members: none

Closing by Sponsor: none

HEARING ON SB 154
CLARIFY LEGISLATIVE IMMUNITY

Presentation and Opening Statement by Sponsor:

SEN. NATHE, SENATE DISTRICT 10, stated this is a bill to clarify who has legislative immunity at the Local Government level. We define what legislative body and act means to further clarify who has legislative immunity. School boards were specifically included so that everyone would know they are included in legislative immunity. What a Legislative Act does not include is administrative actions undertaken in the execution in law or public policy. This is to make sure that legislative immunity, as we have granted to the Local Government, does not go through to the employees who are merely carrying out administrative policies. The court has made a swing from unlimited liability at the Local Government all the way to granting sovereign immunity to all Local Government bodies. Local Governments would waived their immunity to the extent to their insurance coverage which left a lot of confusion as far as the bar is concerned with regard to any of the entities at the Local Government level, as to how they carry insurance. This bill tries to find a middle ground in this area.

This bill includes 911, at the request of the League of Cities and Towns, because they were extremely concerned that a dispatcher may happen to send someone to the wrong address on a 911 case. They are concerned about their exposure in that type of situation.

Proponents' Testimony:

Joe Bottomly, Attorney - Great Falls, stated sovereign immunity means that the government can be wrong. If someone is hurt the government should pay just like anyone else. That was the law until 1972 in Montana when the Legislature passed an act that gave only the Legislature immunity. Everyone knew what that meant for 15 years. In 1988 blanket sovereign immunity was brought from the dead and now it covers every single act. If a teacher throws a javelin and happens to hit a student in gym class, it is sovereign immunity. If a road crew digs a pit on the side of the road, goes to lunch and forgets to put up a sign, and someone falls into it, it is sovereign immunity. The statue where this blanket sovereign immunity comes from was never intended to be that broad. When the statute was passed it was meant to be legislative policy and never intended to go this far. This bill tries to put it back to where everybody knew it was before 1988.

Michael Sherwood, Montana Trial Lawyers Association, stated there are a few bill this session that cover this same issue. You will note that on the multiple amendments made on pages 1 and 2 of the bill were designed to address the concerns of opponents that are still not happy in the Senate. We have no objection to those. Specifically, the opponents wanted to make sure that we are not only granting legislative immunity to states, counties, municipalities, and school districts, but also other Local Government entities or other local political sub-divisions vested with legislative power by statute.

On page 3 of this bill, as drafted, defines what is legislative immunity. The proponents were successful in the Senate in getting a rider on this bill that says "Government entities will be immune when providing 911 services." This is not legislation, this is an administrative procedure by cities and towns. It is inappropriate in this bill and we oppose a grant of immunity to cities and towns. We encourage you to delete the language found on page 3, subsection 4, regarding Governmental immunity as it applies to 911 services.

The Supreme Court has now stated that local governments, their agencies and boards, are immune. We cannot even get them in court. The latest case says that to the extent that their is insurance and the extent of those policy limits, that immunity was waived, at least in the Crowle decision. Number 5 on page 3 is a reversal of that decision. It says the acquisition insurance coverage, including self-insurance or group self-insurance by governmental entity, does not waive immunity provided by this statute. I also oppose that amendment that was proposed by the proponents. I don't have a strong objection to it, but this committee has to make a decision on what is sound public policy. Our position in opposing that amendment in the Senate was that it makes no sense to exempt insurance companies. That is what subsection 5 does. It says if there where a determination that the city of Two-Dot, for example, had an insurance policy and despite the fact that they were arguably

immune, they had insured against some sort of potential claim. One of their employees was negligent and someone was hurt, this says that even though the insurance company had collected the premium they do not, now, have to pay for the damage.

Rep. Whalen's bill, HB 653, deals with Legislative Immunity, but also deals with quasi-judicial immunity. The other major distinction between HB 653 and SB 154 is that SB 154 is retroactive and we are very much in support of retroactivity in this bill because it will help Nani Linder and other people similar to her that have been injured since 1988.

Alec Hansen, Montana League of Cities and Towns, stated that the League of Cities and Towns support this bill and offered a set of amendments to this bill over in the Senate and two of them were accepted. The amendment on 911 service is critical for us. We will not be able to continue to offer this critical public service if there is not some limited immunity to protect the people and the government. The amendment we offered waived immunity if there is gross negligence. We are really concerned about are routine modest mistakes that could occur at any 911 service, but could grow into an extensive law suit. It is our intent to continue to supply the 911 service. But, that will be very difficult if we don't have the protection that is included in that amendment.

The other amendment was the acquisition of insurance companies include the self-insurance by governmental entity does not waive immunity. We feel this is absolutely critical. This Crowle case should be reversed and addressed by the Legislature.

Mr. Hanson stated that he would like this committee to consider the other amendments we proposed in the Senate. **EXHIBIT 1**

David Hull, City Attorney - Helena, stated we are in favor of this bill with the proposed amendments. You have heard a lawyers perspective on sovereign immunity. The way you should look at it is a more balancing factor by balancing the individuals rights to regress the wrongs done to them against a government organization's ability to take care of that. The state continually mandates new obligations on the cities and counties. For example, under state law we are required to provide a Fire Marshall for the State Fire Marshall Office from the city to do the work as directed by the states office. The State's Fire Marshall Office is proposing various new regulations which would increase this person's duty to the point of requiring two deputies in our fire department and still would be short of man power. It is unreasonable for the city to be sued because we ar unable financially to provide the services that the state mandates that we provided. The amendments Alec Hanson has proposed and the amendments in this bill, strike a fair balance between a person's individual rights and the local governments ability to provide services.

Jacqueline Terrell, American Insurance Association, stated that the American Insurance Association is not taking a position on what you determine to be the appropriate public policy with respect to sovereign immunity; however, they are in favor of the amendments in this bill with respect to insurance coverage. Mr. Sherwood indicated to you that if you allow immunity to not be waived when there is insurance coverage, that it would effect in affect unjustly enrich insurance companies. She submitted that it puts the process in slightly the opposite order. If one does not treat everyone similarly under this law, what one is doing is putting the insurance company, that is going to underwrite the risk, in the position of trying to guess whether there is immunity or whether there is not immunity. That is going to make the underwriting much more difficult. The insurance company will have to err on the side of caution and is going to increase the cost of insurance coverage should the entity choose to insure and thus decrease insurance availability. She felt that if the committee chooses to pass this bill, her association would request that the amendments with regard to insurance coverage in place be left in the bill.

Phil Campbell, Montana Education Association, stated his association want to go on record in support of this bill. It will put things back where they were and should still be. He stated that the association takes no position on the amendments.

Jim Jenson, Montana Environmental Information Center, stated that if this bill does not come out of this committee with a favorable vote then we will urge the Senate to move SB 691 through. The point of this bill is that the people who live in the dump here in Helena, have had their ground water contaminated and subsequently lost their home or become divorced, will have a way to get the county into court. We urge you to understand there are people who are directly affected by this problem unfairly.

J. Michael Young, Attorney - State Tort Claims Division, gave written testimony in favor of SB 154. EXHIBIT 2

Opponents' Testimony:none

Questions From Committee Members:none

Closing by Sponsor:

SEN. NATHE stated that he would like this committee to not take any action on this bill today and wait for the Senate to hear the quasi-judicial tomorrow morning.

HEARING ON SB 246
REMOVE TERMINATION OF TORT LIABILITIES LIMITS

Presentation and Opening Statement by Sponsor:

SEN. NATHE, SENATE DISTRICT 10, stated that SB 246 is a bill to

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3-13-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI			
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

Submitted by Mike Pinsoneault shows amendments he wanted in Senate and proposes here.

Amendments to Senate Bill No. 154
First Reading Copy (White)

Requested by Senator Pinsoneault
(League of Cities and Towns)
For the Committee on Judiciary

EXHIBIT 1
DATE 3-13-91
SB 154

Prepared by Valencia Lane
February 7, 1991

1. Page 1, line 17.
Strike: "includes"
Insert: "means only"

2. Page 1, line 18.
Strike: "and"
Following: "districts"
Insert: ", and any other local government entity vested with legislative power by statute"

3. Page 1, lines 21 through 23.
Following: "and" on line 21
Strike: remainder of line 21 through "boards" on line 23
Insert: "that branch or portion of any other governmental entity empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves"

4. Page 2, line 16.
Following: line 15
Insert: "(4) A governmental entity and its members, officers, employees, and agents are immune from suit for damages arising from the undertaking or failure to undertake any judicial or quasi-judicial act, including but not limited to the approval or denial of a license, permit, or zoning matter, when an administrative remedy is available. This provision does not preclude judicial review, otherwise allowed by law, of any administrative decision.

(5) (a) A governmental entity and its members, officers, employees, and agents are immune from suit arising out of any defect, including but not limited to lack of repair or lack of maintenance, of any public area or public works when:

(i) the governmental entity did not have prior notice of the defect; or

(ii) the legislative body, in the face of competing financial demands, had duly adopted a plan of upgrade, maintenance, or repair of certain public areas or public works and the suit alleges a defect in a public area or public work that is either included in or excluded from the plan.

(b) The immunity provided by this section does not serve to immunize a governmental entity from negligence arising out of acts or omissions of its employees in carrying out ministerial functions.

(c) As used in this subsection (5), the following definitions apply:

(i) "Public areas" means any highway, street, alley, sidewalk, boulevard, parking area, causeway, bridge, airport runway or taxiway, or any other public place or grounds dedicated to public use and all appurtenances necessary for the control of the ways, including but not limited to street signs, traffic lights and controls, parking meters, and guardrails.

(ii) "Public works" includes but is not limited to any sewage disposal system, water supply system, and garbage disposal system.

— (6) A governmental entity and its members, officers, employees, and agents are immune from suit for any act or omission arising out of the operation of a 911 emergency number service, including but not limited to answering and dispatching the 911 telephone call and responding to the 911 telephone call location. This immunity does not apply to gross negligence or willful and wanton acts or omissions.

— (7) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity may not be considered to waive the immunity provided by this section."

Renumber: subsequent subsection

EXHIBIT 2
DATE 3-13-91
SB 154

January 31, 1991

Senator Richard Pinsoneault, Chairman
Senate Judiciary Committee

Re: Senate Bill No. 154 - Clarification of Legislative Immunity

Dear Senator Pinsoneault:

This is to advise you and the other members of the Judiciary Committee of my support for Senate Bill No. 154.

As the former chief legal counsel of the State Tort Claims Division, and its predecessor agency the Insurance and Legal Division, I was instrumental in the drafting and administration of the Montana Tort Claims Act from the passage of the new constitution until 1985. This included that section of the Tort Claims Act codified as 2-9-111 which provides immunity from legislative acts and omissions.

In my capacity as one of the attorneys submitting this legislation to the legislature on behalf of the executive branch, it was clearly our intention that immunity be given to local government legislative bodies only for their legislative acts. In particular, the thinking at the time was that this involved all efforts in the preparation, drafting, debate, and passage of ordinances by city councils, as well as resolutions by boards of county commissioners. At no time during the debate on this legislation, or during the work by the joint senate and house judiciary subcommittee which examined the issue from 1975 to 1977, was there ever any discussion that executive actions of local government boards would be subject to immunity.

Indeed, given the Montana Supreme Court decisions during the past three years that have conferred sovereign immunity on virtually every type of executive action of a local governing board, we now see a resurrection of the very same dilemmas that gave rise to the constitutional debate concerning abolition of sovereign immunity in the first instance. For example, cheerleaders and students who might be hurt by defective facilities or negligent crowd control at a local school district sporting event have no right of recovery, while the very same injuries

EXHIBIT 2
DATE 3-13-91
SB 154

Re: Senate Bill No. 154

occurring at a unit of the Montana University system will allow full recovery. The same is true for any claims that arise out of premises maintenance or the actions of staff in carrying out the executive functions of the board. Surely, neither the members of the legislature or the constitutional convention delegates would agree that the recovery for injuries sustained by our citizens should be dependent on whether one was injured by a county employee or a state employee!

In my opinion, if one were to poll the members of the joint House and Senate Judiciary subcommittee who thoroughly examined these issues between the 1975 and 1977 sessions of the legislature, I doubt that you could find one participant who foresaw this dichotomy in our law.

For these reasons I urge you and the other members of the committee to pass Senate Bill No. 154.

Very truly yours,

JMY/pes J. Michael Young

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 20, 1991, at 8:12 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Keller

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 379

Motion: **REP. BROWN MOVED SB 379 DO BE CONCURRED IN.**

Motion: **REP. WYATT** moved to amend SB 379. **EXHIBIT 1**

Discussion:

REP. WYATT stated that the training program of probation and parole officers is inadequate. She stated that most of her amendment addresses some of the training and the other part of

CHAIRMAN STRIZICH stated that there is a dilemma in a philosophy in the state of Montana. "Unfortunately where the probation and parole officers are right now, is a lot different from where they were 10 years ago, because of what we have done in this legislature they have police officer problems and responsibilities and they want to be recognized for that." He stated that probation and parole officers are far more educated that some people currently holding police officer status. Rep. Strizich said, "Not once was anyone misrepresenting the position of the probation and parole officer."

REP. MEASURE stated that if the committee wants to train probation and parole officers then why don't they draft a bill that would do that without involving the Board of Crime Control.

CHAIRMAN STRIZICH stated that the Board of Crime Control has been a clearing house and a resource, at many different levels, for many criminal justice agencies. He stated that the Department of Institutions has used that resource to the extent they should have. He stated that the committee is making a policy decision about whether or not the Department of Institutions needs some help. Rep. Strizich said, "I think they probably do in this instance." He stated that they have been unable to develop a training program and they Board of Crime Control does assist in developing training programs routinely.

REP. LEE stated that this bill is needed in some form.

Motion: **REP. LEE** moved to amend SB 379 by taking out police officer status in sections 1 and 2 and that the language on page 7 makes sure the training gets done at the police academy.

Discussion:

REP. BROWN stated that Rep. Lee's amendment essentially neutralizes the bill. He stated that there has been proposed legislation pertaining to this for 10 years and that for 10 years the Department of Institutions has refused to do anything about it.

Vote: Motion carried 10 to 9. EXHIBIT 2

Motion/Vote: **REP. LEE MOVED SB 379 DO BE CONCURRED IN AS AMENDED.** Motion carried.

EXECUTIVE ACTION ON SB 154

Motion: **REP. NELSON MOVED SB 154 DO BE CONCURRED IN.**

Motion: **REP. MEASURE** moved to amend SB 154. (Refer to Standing Committee Report)

Discussion:

REP. MEASURE stated that his amendment deals with the Senate amendments to include the operation of 911 Emergency Telephone Service. He stated that with Rep. Bradly's bill, this particular portion of the bill is no longer needed and doesn't belong in the bill in the first place.

REP. STICKNEY stated that Rep. Bradly's bill only deals with the companies that serve rural areas.

REP. MEASURE stated that was probably true, but this deals with governmental agencies.

Motion: Motion carried 10 to 9. EXHIBIT 3

Motion: REP. GOULD MOVED SB 154 DO BE CONCURRED IN AS AMENDED.

Motion: REP. TOOLE move to amend SB 154 by striking lines 9, 10, and 11 on page 3.

Discussion:

REP. TOOLE stated that SB 154 allows immunity in a very large why and to have something in the bill that deals with waiver of immunity is irrelevant.

REP. BROWN stated that Alec Hanson said to be sure the bill doesn't come out of committee without the provision for waiver of immunity because it was absolutely critical to the local governments. Rep. Brown said, "I suggest that we defeat the amendment."

REP. TOOLE asked REP. BROWN what Alec Hanson's reason was for making that statement?

REP. BROWN stated that without that amendment in the bill there is no guarantee that their self-insurance policies would apply because of the CROWL decision and regardless of anything else, they needed to be sure they weren't penalized for trying to self-insure for as much as they could.

John MacMaster stated that it is very important that the subject be addressed by saying "you waive immunity by purchasing insurance" or "you don't waive immunity by purchasing insurance." He stated that the whole point of that decision was "was immunity waived by the purchase of the insurance or wasn't it". He stated that the courts say it isn't clear. He felt that whichever way the committee goes with this, it should be stated in the bill that "does not waive immunity provided by the section, unless the insurance policy specifically states that the immunity is waived." He felt that the way the subsections reads as it is, it states that the acquisition of insurance does not waive immunity and it will be interpreted to mean the mere or sole fact that you

bought insurance doesn't waive that immunity.

Motion/Vote: REP. LEE MADE A SUBSTITUTE MOTION to amend SB 154 with the amendment proposed by John MacMaster. Motion failed on a tie vote. EXHIBIT 4

Vote: Motion failed 5 to 13. EXHIBIT 5

Motion/Vote: REP. GOULD MOVED SB 154 DO BE CONCURRED IN AS AMENDED. Motion carried 19 to 1 with Rep. Clark voting no.

HEARING ON SB 198
CORRECT HOUSING DISCRIMINATION CITATION ERROR

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that this was requested by the Commission on Human Rights. He stated that SB 198 corrects an incorrect citation in the Federal Law. The 1990 Legislature enacted legislature that prohibited discrimination in housing for families with children, but the legislature recognized an exception to that in places where housing is primarily for Senior Citizens. He stated that in the citation that reflected that exception was adopted by reference and cited in the law. "The problem was that it was an incorrect citation." He stated that this bill corrects that citation and makes the bill retroactive on its applicability in the event someone refused to allow a family with children from living in an apartment complex that was for Senior Citizens only.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor: NONE

HEARING ON SB 199
AMEND HOUSING DISCRIMINATION LAWS TO CONFORM TO FEDERAL LAW

Presentation and Opening Statement by Sponsor:

SEN. BROWN, SENATE DISTRICT 2, stated that this bill was at the request of the Human Rights Commission. He stated that SB 199 is an act that amends housing discrimination laws and makes them substantially equivalent to Federal Discrimination Laws.

Proponents' Testimony:

Ann MacIntyre, Administrator - State's Human Rights Commission,

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 3.20.91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI	/		
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER			/
REP. THOMAS LEE	/		
REP. BRUCE MEASURE	/		
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

EXHIBIT 3
DATE 3-20-91
SB 154

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20 BILL NO. SB 154 NUMBER

MOTION: Measure Amendment

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR	—	
REP. ARLENE BECKER	—	
REP. WILLIAM BOHARSKI		—
REP. DAVE BROWN		—
REP. ROBERT CLARK		—
REP. PAULA DARKO	—	
REP. BUDD GOULD		—
REP. ROYAL JOHNSON		—
REP. VERNON KELLER		—
REP. THOMAS LEE		—
REP. BRUCE MEASURE	—	
REP. CHARLOTTE MESSMORE		—
REP. LINDA NELSON		—
REP. JIM RICE	—	
REP. ANGELA RUSSELL	—	
REP. JESSICA STICKNEY	—	
REP. HOWARD TOOLE	—	
REP. TIM WHALEN	—	—
REP. DIANA WYATT	—	
REP. BILL STRIZICH, CHAIRMAN	—	
TOTAL	10	9

EXHIBIT 4
DATE 3-20-91
SB 154

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20-91 BILL NO. SB 154 NUMBER

MOTION: Rep. Lee motion to amend

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI	/	
REP. DAVE BROWN	/	
REP. ROBERT CLARK	/	
REP. PAULA DARKO		/
REP. BUDD GOULD	/	
REP. ROYAL JOHNSON	/	
REP. VERNON KELLER	/	
REP. THOMAS LEE	/	
REP. BRUCE MEASURE		/
REP. CHARLOTTE MESSMORE	/	
REP. LINDA NELSON		/
REP. JIM RICE	/	
REP. ANGELA RUSSELL		/
REP. JESSICA STICKNEY	/	
REP. HOWARD TOOLE		/
REP. TIM WHALEN		/
REP. DIANA WYATT		/
REP. BILL STRIZICH, CHAIRMAN		/
TOTAL	10	10

EXHIBIT 5
DATE 3-20-91
SB 154

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL VOTE

DATE 3-20 BILL NO. SB 154 NUMBER

MOTION: Toole Amen

NAME	AYE	NO
REP. VIVIAN BROOKE, VICE-CHAIR		/
REP. ARLENE BECKER		/
REP. WILLIAM BOHARSKI		/
REP. DAVE BROWN		/
REP. ROBERT CLARK		/
REP. PAULA DARKO	/	
REP. BUDD GOULD		/
REP. ROYAL JOHNSON		/
REP. VERNON KELLER		/
REP. THOMAS LEE		/
REP. BRUCE MEASURE	/	
REP. CHARLOTTE MESSMORE		/
REP. LINDA NELSON		/
REP. JIM RICE		/
REP. ANGELA RUSSELL	/	
REP. JESSICA STICKNEY		/
REP. HOWARD TOOLE	/	
REP. TIM WHALEN	/	
REP. DIANA WYATT	/	
REP. BILL STRIZICH, CHAIRMAN	/	
TOTAL	8	12

HOUSE OF REPRESENTATIVES

VISITOR'S REGISTER

House Judiciary COMMITTEE BILL NO. SB # 154

DATE 3-03-11 SPONSOR(S) Sen. Wanz

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	BILL	OPPOSE	SUPPORT
Joe Bottarky	self	154		X
Gordon Morris	MACo	154		
David Hull Helena	City of Helena	154		X
Phil Campbell	MEA	154		X
Michael Sherwood	MTCA	154	~~X~~	X
Chris Kaufman/Jim Jensen	MEIC	154		X
Jacqueline N. Terrell	Am. Ins. Assoc.	154		X as amended

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on March 21, 1991, at 10:12 a.m.

ROLL CALL

Members Present:
Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

EXECUTIVE ACTION ON SB 199

Motion: REP. WYATT MOVED SB 199 DO BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 154

Motion: REP. WHALEN MOVED TO RECONSIDER SB 154.

Discussion:

REP. WHALEN stated that this bill is an immunity bill. He stated that he and Sen. Nathe agreed on some amendments and he would like to amend the bill. EXHIBIT 1

REP. NELSON asked REP. WHALEN when he talked with Sen. Nathe? She stated that she sat with Sen. Nathe yesterday and he said he was going to resist these amendments.

REP. WHALEN stated that it was news to him. He stated that he talked with Sen. Nathe on Saturday morning and at that time, told him what he was proposing to do and on Monday evening Sen. Nathe told him he was agreeable to the amendments.

REP. NELSON stated she had met with Sen. Nathe yesterday and said he did not agree with these amendments.

REP. WHALEN stated that in view of that he would withdraw his amendments and talk with Sen. Nathe.

OTHER COMMITTEE BUSINESS:

Discussion:

REP. RICE stated that he would like to introduce a motion that the Judiciary Committee request a bill to be drafted. He stated that as the Judiciary Committee knows it has had all the detention legislation that has come through the session and the only issue remaining, in terms of that whole package, is how it will be funded. One idea that has surfaced is the idea of accessing an annual permit fee on all video games in the state. The connecting being that it is kids that play these video games and it is a total cash business. There is not system for knowing how much income is made from these machines. It would be required for these machines to be permitted and there would be an annual fee paid on each machine. He felt this might be a mechanism that would be more satisfactory for funding the juvenile detention needs the state has.

CHAIRMAN STRIZICH clarified the motion stating that it would be for the drafting of the bill and then brought back to the committee for final decisions.

REP. BOHARSKI asked REP. RICE if there was $600,000 in the special revenue account from gambling machines? REP. RICE stated that this is not gambling machines. They are amusement games and arcade games. There is not tax on these games.

REP. MEASURE asked what level of taxation is being proposed?

REP. RICE stated that the level would be on what the permit fee

3-21-91
JDB

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 154 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Bill Strizich, Chairman

Carried by: Rep. Iverson

And, that such amendments read:
1. Title, line 10.
Following: "ACTIONS"
Strike: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE"

2. Page 3, line 2,
Strike: Subsection (4) in its entirety.
Renumber: subsequent subsections

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 3-21-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD	✓		
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT	✓		
REP. BILL STRIZICH, CHAIRMAN	✓		

HOUSE STANDING COMMITTEE REPORT

March 21, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 154 (third reading copy -- blue) be concurred in as amended.

Signed: Bill Strizich
Bill Strizich, Chairman

Carried by: Rep. Toole

And, that such amendments read:
1. Title, line 10.
Following: "ACTIONS"
Strike: "OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE"

2. Page 3, line 2,
Strike: Subsection (4) in its entirety.
Renumber: subsequent subsections

HOUSE
SB 154

EXHIBIT 1
DATE 3-21-91
SB 154

Amendments to Senate Bill No. 154
Third Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
March 19, 1991

1. Title, lines 5 through 12.
Strike: "CLARIFYING" on line 5 through "AMENDING" on line 12
Insert: "REVISING THE LAW RELATING TO LEGISLATIVE IMMUNITY; PROVIDING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS, NOT ADMINISTRATIVE ACTIONS; AMENDING SECTION 20-15-403, MCA; REPEALING"

2. Page 1, line 15.
Insert: "WHEREAS, in 1972, the State of Montana adopted a new constitution that abolished governmental immunity, except as specifically provided by law by a two-thirds vote of each house of the Legislature; and

WHEREAS, in 1977, the Legislature adopted statutory immunity from suit for legislative acts and omissions in accordance with the provisions of the 1972 Montana Constitution; and

WHEREAS, in 1989, the Montana Supreme Court, in the case of Peterson v. Great Falls School District, 237 Mont. 376, 773 P.2d 316 (1989), held that the legislative immunity statute protected a school district from liability for the discharge of an employee by the school board's administrative assistant; and

WHEREAS, in 1989, the Montana Supreme Court, in the case of State ex rel. Eccleston v. District Court, 240 Mont. 44, 783 P.2d 363 (1989), held that the legislative immunity statute protected a school district and individual employees from liability for a slip-and-fall accident on school property; and

WHEREAS, in Crowell v. School District No. 7 of Gallatin County, 48 St. Rep. 81 (1991), Chief Justice Turnage stated, in his concurring opinion, that the legislature, not the courts, is the proper forum for the subject of tort liability immunity of governmental entities; and

WHEREAS, recent decisions of the Montana Supreme Court have carried legislative immunity beyond the orbit of legislative action into the sphere of administrative immunity; and

WHEREAS, recent decisions of the Montana Supreme Court have extended legislative immunity beyond the intent of the Legislature and the framers of the 1972 Montana Constitution; and

WHEREAS, it is the intention of the Legislature to address the statutory interpretations found in the recent Montana Supreme Court decisions regarding legislative immunity; and

WHEREAS, it is the intention of the Legislature to revise statutory legislative immunity to specifically exclude administrative functions; and

THEREFORE, it is appropriate for the Legislature to repeal a statute relating to legislative immunity that has been misinterpreted by the Montana Supreme Court and to enact a new

statute."

3. Page 1, line 17 through page 3, line 14.
Strike: section 1 in its entirety
Insert: "NEW SECTION. **Section 1. Immunity from suit for legislative acts and omissions -- exceptions.** (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards. Legislative body does not include executive or administrative agencies of a governmental entity exercising nonlegislative responsibilities.

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy; and

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; and

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for a legislative act or omission by its legislative body, or any member or staff of the legislative body, engaged in legislative acts.

(3) A member or staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with legislative acts of the legislative body.

(4) The immunity provided for in this section does not extend to:

(a) nonlegislative actions taken by a legislative body; or

(b) any act or omission that results in or contributes to personal injury or property damage caused by contamination or other alteration of the physical, chemical, or biological properties of surface water, ground water, soil, or air.

Section 2. Section 20-15-403, MCA, is amended to read:

"20-15-403. Applications of other school district provisions. (1) When the term "school district" appears in the following sections outside of Title 20, the term includes community college districts and the provisions of those sections applicable to school districts apply to community college districts: 2-9-101, ~~2-9-111~~ [section 1], 2-9-316, 2-16-114, 2-16-602, 2-16-614, 2-18-703, 7-3-1101, 7-6-2604, 7-6-2801, 7-7-123, 7-8-2214, 7-8-2216, 7-11-103, 7-12-4106, 7-13-110, 7-13-210, 7-15-4206, 10-1-703, 15-1-101, 15-6-204, 15-16-101, 15-16-601, 15-55-106, 15-70-301, 15-70-322, 17-5-101, 17-5-202, 17-6-103, 17-6-204, 17-6-213, 17-7-201, 18-1-201, 18-2-101, 18-2-103, 18-2-113, 18-2-114, 18-2-404, 18-2-432, 18-5-205, 19-1-102, 19-1-811, 22-1-309, 25-1-402, 27-18-406, 33-20-1104, 39-3-104, 39-4-107, 39-31-103, 39-31-304, 39-71-116, 39-71-117, 39-71-2106, 39-71-2206, 40-6-237, 41-3-1132, 49-3-101, 49-3-102, 53-20-304, 77-3-321, 82-10-

201, 82-10-202, 82-10-203, 85-7-2158, and 90-6-208 and Rules 4D(2)(g) and 15(c), M.R.Civ.P., as amended.

(2) When the term "school district" appears in a section outside of Title 20 but the section is not listed in subsection (1), the school district provision does not apply to a community college district."

NEW SECTION. **Section 3. Repealer.** Section 2-9-111, MCA, is repealed.

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 2, chapter 9, part 1, and the provisions of Title 2, chapter 9, part 1, apply to [section 1]."

Renumber: subsequent sections

SENATE BILL NO. 154

INTRODUCED BY NATHE, LYNCH, COBB,

WHALEN, L. NELSON

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS TAKEN BY THOSE BODIES; CLARIFYING THAT GOVERNMENTAL ENTITIES ARE NOT IMMUNE UNDER THE LEGISLATIVE IMMUNITY STATUTE FOR NONLEGISLATIVE ACTIONS ~~OTHER THAN OPERATION OF A 911 EMERGENCY TELEPHONE SERVICE~~; CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" ~~includes~~ MEANS ONLY the state, counties, municipalities, and school districts, AND ANY OTHER LOCAL GOVERNMENT ENTITY OR LOCAL POLITICAL SUBDIVISION VESTED WITH LEGISLATIVE POWER BY STATUTE;

(b) the term "legislative body" ~~includes~~ means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and ~~any local governmental entity given legislative powers by statute, including school boards~~ THAT BRANCH OR PORTION OF ANY OTHER LOCAL GOVERNMENTAL ENTITY OR LOCAL POLITICAL SUBDIVISION EMPOWERED BY LAW TO CONSIDER AND ENACT STATUTES, CHARTERS, ORDINANCES, ORDERS, RULES, POLICIES, RESOLUTIONS, OR RESOLVES;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy; and

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; OR

(C) ACTIONS BY A SCHOOL BOARD THAT RESULT IN ADOPTION OF SCHOOL BOARD POLICIES PURSUANT TO 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for ~~an~~ a legislative act or omission ~~of~~ by its legislative body, or ~~a~~ any member, ~~officer, or agent thereof~~ or staff of the legislative body, engaged in legislative acts.

(3) ~~A~~ Any member, ~~officer,~~ or ~~agent~~ staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with ~~the introduction or consideration of legislation or~~

action by legislative acts of the legislative body.

~~(4) A GOVERNMENTAL ENTITY AND ITS MEMBERS, OFFICERS, EMPLOYEES, AND AGENTS ARE IMMUNE FROM SUIT FOR ANY ACT OR OMISSION ARISING OUT OF THE OPERATION OF A 911 EMERGENCY NUMBER SERVICE, INCLUDING BUT NOT LIMITED TO ANSWERING AND DISPATCHING THE 911 TELEPHONE CALL AND RESPONDING TO THE 911 TELEPHONE CALL'S LOCATION. THIS IMMUNITY DOES NOT APPLY TO GROSS NEGLIGENCE OR WILLFUL AND WANTON ACTS OR OMISSIONS.~~

(5)(4) THE ACQUISITION OF INSURANCE COVERAGE, INCLUDING SELF-INSURANCE OR GROUP SELF-INSURANCE, BY A GOVERNMENTAL ENTITY DOES NOT WAIVE THE IMMUNITY PROVIDED BY THIS SECTION.

(6)(5) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation."

NEW SECTION. **Section 2. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 3. Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action ~~arising on or after July 1, 1977,~~ that have not been reduced to FINAL judgment by ON OR

BEFORE [the effective date of this act].

-End-

Conference Committee
on Senate Bill No. 154
Report No. 1, April 22, 1991

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 154, met, considered, and acceded to the House Judiciary Standing Committee Report amendments dated March 21, 1991 in their entirety.

And recommend that this Conference Committee report be adopted.

For the Senate:

Chair, Sen. Svrcek

Sen. Towe

Sen. Nathe

For the House:

Chair, Rep. L. Nelson

Rep. Hoffman

Rep. Toole

4-22-91
Asst. Coord.

SB 4-22-91 3:00
Sec. of Senate

ADOPT

REJECT

CCR #1
SB 154
861446CC.Sji

AN ACT CLARIFYING THAT STATUTORY LEGISLATIVE IMMUNITY EXTENDS ONLY TO LEGISLATIVE BODIES OF GOVERNMENTAL ENTITIES AND ONLY TO LEGISLATIVE ACTIONS TAKEN BY THOSE BODIES; CLARIFYING THAT GOVERNMENTAL ENTITIES ARE NOT IMMUNE UNDER THE LEGISLATIVE IMMUNITY STATUTE FOR NONLEGISLATIVE ACTIONS; CLARIFYING THAT THE ACQUISITION OF INSURANCE DOES NOT WAIVE IMMUNITY; AMENDING SECTION 2-9-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-9-111, MCA, is amended to read:

"2-9-111. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" ~~includes~~ means only the state, counties, municipalities, and school districts, and any other local government entity or local political subdivision vested with legislative power by statute;

(b) the term "legislative body" ~~includes~~ means only the legislature vested with legislative power by Article V of The Constitution of the State of Montana and ~~any--local--governmental entity--given--legislative--powers--by--statute,--including-school boards,~~ that branch or portion of any other local governmental entity or local political subdivision empowered by law to consider and enact statutes, charters, ordinances, orders, rules, policies, resolutions, or resolves;

(c) (i) the term "legislative act" means:

(A) actions by a legislative body that result in creation of law or declaration of public policy;

(B) other actions of the legislature authorized by Article V of The Constitution of the State of Montana; or

(C) actions by a school board that result in adoption of school board policies pursuant to 20-3-323(1);

(ii) the term legislative act does not include administrative actions undertaken in the execution of a law or public policy.

(2) A governmental entity is immune from suit for ~~an~~ a legislative act or omission ~~of~~ by its legislative body, or ~~a~~ any member,~~--officer,--or--agent thereof~~ or staff of the legislative body, engaged in legislative acts.

(3) ~~A~~ Any member,~~-officer,~~ or ~~agent~~ staff of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with ~~the-introduction--or consideration--of-legislation-or-action-by~~ legislative acts of the legislative body.

(4) The acquisition of insurance coverage, including self-insurance or group self-insurance, by a governmental entity does not waive the immunity provided by this section.

~~(4)~~(5) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation."

Section 2. **Severability.** If a part of [this act] is invalid,

all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. **Effective date -- retroactive applicability.** [This act] is effective on passage and approval and applies retroactively, within the meaning of 1-2-109, to causes of action that have not been reduced to final judgment on or before [the effective date of this act].